
Costs Decision

Site visit made on 8 January 2025

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2025

Costs application in relation to Appeal Ref: APP/U1430/W/24/3352161 Caprea Cottage Lane, Westfield, Hastings TN35 4DZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Pumphouse Designs for a full award of costs against Rother District Council.
 - The appeal was against the refusal of planning permission for a development described as:
Proposed dwellinghouse attached to Caprea.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The application for an award of costs is predicated on the substantive grounds that the Council refused planning permission against the advice of its professional officers, delayed making a making a decision on the application by deferring the proposal for further information on highways matters before refusing permission on other grounds, and failing to take into account national planning policy in respect of the presumption in favour of sustainable development.
4. The Council's Planning Committee is not obliged to accept the advice of its professional officers. The Planning Committee, acting as the Local Planning Authority, is entitled to exercise its judgement in determining an application and come to a different conclusion, provided that the decision is made on planning grounds.
5. Whilst the Council's evidence to the appeal was not as fulsome as it perhaps might have been, it was, nonetheless, adequate to demonstrate why the Planning Committee made the decision that it did, and that this decision was related to planning policies. Although I ultimately did not find in the Council's favour in this respect, it does not make the Council's behaviour unreasonable.
6. In terms of the Planning Committee deferring making a decision and subsequently refusing planning permission for a different reason from that of the deferral, the minutes of the May meeting of the Planning Committee make it clear that the decision on the application was deferred both to seek further comments from the Highway Authority, and for members to visit the site. From the evidence that I

- have, the Committee did not express a view on the acceptability or otherwise of any aspects of the proposal at its May meeting, before resolving to defer making a decision. It is not unreasonable for the Planning Committee to have later made its final decision having considered all of the aspects of the proposal and having visited the site with their officers.
7. On the final point, it is not in dispute that the Council cannot demonstrate a deliverable 5 year supply of housing land. As such, Paragraph 11d) of the National Planning Policy Framework (at the time of the Council's decision this was the December 2023 version) was engaged by reason of Footnote 8. Notwithstanding that the Council may have considered those relevant development plan policies that were pertinent and not out-of-date, due to the lack of a five year housing land supply Paragraph 11d) is immediately triggered. The Council was thus obliged to have regard to Paragraph 11d) and weigh the adverse impacts of granting planning permission against the benefits of the scheme, irrespective of whether or not the most relevant policies were in substance out of date.
 8. There is no evidence before me which demonstrates that the Committee carried out such an exercise. The Planning Officer's report did not do so, as it recommended that the proposal be granted planning permission. The Council's Statement of Case, however, sets out that there was no need to apply Paragraph 11d)¹. Although the most relevant policies may be up to date in so far as they are consistent with the Framework, if either of the criteria in Footnote 8 apply there is no discretion to consider whether there are relevant development plan policies, or whether policies that are most important for determining the application are out-of-date, and so potentially disapply paragraph 11d).
 9. The Framework capable of being a material consideration for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004. The lack of any evidence of the required balancing exercise indicates that a potential material consideration was not taken into account.
 10. The question is, therefore, whether the failure by the Council to take into account a potential material consideration was unreasonable. In the context of an application for an award of costs in respect of a planning appeal "unreasonable" means unreasonable in the ordinary sense of the word, not unreasonable in a *Wednesbury* sense².
 11. Had the Council taken into account the balancing exercise required by Paragraph 11d) it may, or may not, have made a different decision. The relative weights to be given to any adverse effects and any potential benefits are a matter for the decision maker and there is no evidence as to what the Council might have concluded in this respect. It is not a forgone conclusion that the Council, even in the event that it had considered that the presumption in favour of sustainable development had been engaged, would have granted planning permission, thus obviating the need for the appeal. The presumption in favour of sustainable development does not override policies in the development plan against which the final decision is to be made, it is merely a material consideration.

¹ LPA Statement of Case Paragraph 4.4

² See *Manchester City Council v Secretary of State for the Environment and Mercury Communications Ltd* [1988] J.P.L. 774 and *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* (1948) 1 KB 223.

12. Whilst the Council may have erred in not taking into account the requirements of Paragraph 11d), was that action unfair, or difficult to justify? Notwithstanding my decision on the appeal, I cannot conclude with any certainty that the Council would have made a different decision on the original planning application had it done so, or that the need to appeal would have been avoided. Consequently, on balance, I find that the Council did not act unreasonably in this respect to the extent that a partial award of costs with regard to this ground would be justified.
13. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

John Dowsett

INSPECTOR