
Costs Decision

Inquiry held 24 September-1 October 2014

Site visit made on 1 October 2014

by P Willows BA DipUED MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 October 2014

Costs application in relation to Appeal Ref: APP/G2435/A/14/2217036 Lower Packington Road, Ashby-de-la-Zouch, Leicestershire LE65 1TS

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Hallam Land Management Ltd for a full award of costs against North West Leicestershire District Council.
 - The inquiry was in connection with an appeal against the refusal of outline planning permission for residential development of up to 70 dwellings (Class C3) Green Infrastructure to include: retained vegetation; habitat creation (including new woodland planting); open space, amenity space and play areas; sustainable drainage systems/features; and new walking/cycling/recreational routes. Infrastructure to include highway and utilities and associated engineering works (including ground modelling) and vehicular access via the construction of a new junction off the existing Lower Packington Road.
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Decision

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

Reasons

The basis of the application

2. The Government's Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Claims can be procedural – relating to the process; or substantive – relating to the issues arising from the merits of the appeal.
3. The application and the Council's response were both made in writing, and it is not necessary for me to set them out in detail here. There are 2 parts to the application. Firstly, a full award is sought on the basis that it was unreasonable to refuse planning permission (the substantive claim). Secondly (and failing the first part of the application) a partial award is sought on the basis of the introduction of late evidence relating to the housing land requirement (the procedural claim).

The substantive claim

4. The PPG¹ makes clear that costs may be awarded in circumstances including:
 - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - failure to produce evidence to substantiate each reason for refusal on appeal;
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;
 - not determining cases in a consistent manner.
5. Two reasons for refusal were set out in the decision notice, relating to sustainability and to the alleged failure of the scheme to reflect the established pattern of development. In my view, the reasons given were acceptably clear, adequate and reasonable. They were also an adequate reflection of the minutes of the Planning Committee, if not a carbon copy of them.
6. The appellant is critical of the use of the word 'remote' to describe the appeal site. However, the context for this is the claim that the site was 'remote from services and public transport'. It does not strike me as an unreasonable word to use to get across the Council's concern that the development would not have adequate services or public transport close by.
7. The Council did not refer to any development plan policies in its decision. However, there is no requirement to do so where none are relevant. The Council has clearly considered the matter and has explained that, in the circumstances that prevailed at the time of the decision, no policies were considered to be relevant to its decision. That was a perfectly reasonable stance to take. The Council had not designated the site as being part of any particularly important or sensitive landscape, but it was not precluded from raising concerns about the visual impact of the development on that basis.
8. Having considered all of the evidence brought to my attention, including the minutes of the Planning Committee, I have no reason to conclude that the Committee Members failed to properly consider the planning merits of the proposal or that they had insufficient information to reach to reach their conclusion on it, contrary to the planning officer's recommendation.
9. In support of its decision at the appeal, the Council produced 2 witnesses, each of whom prepared a proof of evidence. Mr Murphy dealt with the matters set out in the decision, while Mr Ireland addressed the additional matter of the housing land requirement. There was no specific 'landscape' witness, but Mr Murphy dealt with the matters set out in the second reason for refusal.
10. Taken as a whole, the Council put together a satisfactory case to support all aspects of its decision. Indeed, I agree with many aspects of its case and have dismissed the appeal. The Council's position changed markedly between the application being determined and the Inquiry taking place, but that was largely due to the changing position regarding housing land requirements and supply.

¹ Reference ID: 16-049-20140306

Appeals must be determined with regard to current circumstances, and the Council was duty-bound to take these matters into account.

11. My attention has been drawn to the Council's resolutions to grant planning permission for two housing developments at Packington. However, I do not have sufficient information to conclude that the Council has been inconsistent in its approach such that unreasonable behaviour has occurred.
12. I conclude that no unreasonable behaviour has occurred in relation to the substantive element of the claim for costs.

The procedural claim

13. The decision to call Mr Ireland to give evidence for the Council in relation to the housing land requirement was made late and his proof of evidence was not provided until 17 September, a week before the start of the Inquiry. The PPG advises that delay in providing information or other failure to adhere to deadlines may result in an award of costs.
14. The Council's position regarding the housing land requirement/supply was clearly an evolving one. However, it wrote to the appellant as early as 16 July to advise that the position had changed due to the endorsement of the SHMA, and a revised Statement of Common Ground was agreed on 26 August to reflect this changed position. It was clear throughout that the appellant would be arguing that there was not a 5 year supply of land. Thus the Council should have been aware of the need to call a witness to deal with the issue well ahead of the start of the Inquiry. In these circumstances, providing Mr Ireland's proof so late, outside the prescribed timetable, was unreasonable. The fact that the Council had earlier 'reserved its position' in relation to the matter does not make its actions reasonable. Although badged as a 'rebuttal', Mr Ireland's proof set out the Council's position in some detail, and did more than simply respond to specific points made by Mr Bolton for the appellant.
15. However, costs may only be awarded if unnecessary or wasted expense has been incurred. In this case, the issue of housing land supply/requirement occupied about a day of inquiry time, and contributed to the need to extend the sitting time. However, it was possible to accommodate this the following week, much as might have occurred if a 5 day Inquiry had been planned at the outset. Thus I cannot see that the lateness of Mr Ireland's proof caused the Inquiry to be any longer than if it had been provided in a timely manner. It was necessary to consider this issue fully, and the availability of expert evidence from both sides was of assistance in doing so. Accordingly, there was no unnecessary or wasted expense as a result of the Council's actions.

Conclusion

16. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, and the application for costs therefore fails.

Peter Willows

INSPECTOR