



Costs Decision

Site visit made on 19 June 2018

by **Gareth Wildgoose BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 July 2018

Costs application in relation to Appeal Ref: APP/H0738/W/18/3195823 Land at 18A Braeside, Kirklevington TS15 9NB

- 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 Mr J Mason for a full award of costs against Stockton-on-Tees Borough Council.
 - The appeal was against the refusal of outline planning permission for a residential development comprising eleven dwellings, including two affordable homes.
-

Decision

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

Reasons

2. The Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The application needs to clearly demonstrate that this is the case, as parties in planning appeals normally meet their own expenses.
3. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes procedural matters during the appeal and substantive matters relating to the matters under appeal. The substantive matters include 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. Other substantive matters include vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, refusing planning permission on a planning ground capable of being dealt with by conditions and not determining similar cases in a consistent manner. The application for costs broadly relates to each of these matters listed as examples.
4. The reasons for refusal set out in the decision notice are specific to the application and the harm identified by the Council in terms of the development, with reference to conflicts with Policy CS2 of the Stockton-on-Tees Core Strategy Development Plan Document (CS), adopted March 2010 and the National Planning Policy Framework. The appeal relates to a development which was determined by the Council's Planning Committee which overturned the officer recommendation. Consequently, the Council's evidence in seeking to substantiate the reason for refusal is its statement of case and costs rebuttal documents, together with the Committee minutes.

5. It will be seen from my appeal decision with respect to the Council's first reason for refusal that I concluded that the proposed development would fail to provide for a suitable living environment for future residents, given the proximity of the site to a sewage treatment works and the potential exposure to odours. In reaching that view, I took account of the odour assessment provided by the applicant and the absence of objections from the Council's Environmental Health officers. However, the totality of evidence before me, together with observations during my visit did not lead me to the same conclusions and in my judgement, the relationship between the dwellings, outdoor amenity spaces and the existing sewage treatment works would not be acceptable and the harm could not be mitigated. Whilst I did not find harm with respect to noise associated with existing sewage works, such matters also reflect a matter of judgement given the evidence from local residents which was presented to the Planning Committee.
6. Having regard to the above, I do not find that the Council's Planning Committee behaved unreasonably in reaching a different view to the odour and noise assessments provided by the applicant and the advice of its own officers when imposing the first reason for refusal. The applicant, therefore, did not suffer any unnecessary or wasted expense in pursuing the appeal.
7. Turning to the Council's second reason for refusal, it will be seen from my appeal decision that I found that the proposal conflicts with Policy CS2 of the CS. The applicant has drawn to my attention that there are other recent developments in Kirklevington at 24 Forest Drive, Land at Springfield Grove and at Land to the West of Thirsk Road, where the Council resolved to grant planning permission in September 2016 and August 2017 respectively. However, the full details of the circumstances which led to those proposals being accepted are not before me and therefore, I cannot conclude that the planning balances were the same as the appeal proposal. In that respect, to my mind, it is reasonable that the Council's Planning Committee could reach a different conclusion on developments located within the same village where the individual circumstances of the proposal and planning balance are different.
8. With regard to the above, the Council's second reason for refusal was not a decisive factor upon the outcome of the appeal when applying my planning balance and I largely agreed with the applicants appeal submissions in that respect, despite the technical conflict with Policy CS2 of the CS. Nonetheless, such a view reflects a matter of judgement based upon the evidence before me and therefore, I cannot find that the Members of the Council's Planning Committee behaved unreasonably in reaching a different view.
9. Taking all of the above into account, I cannot conclude that it has been demonstrated that the Council behaved unreasonably or caused unnecessary or wasted expense for the applicant in the appeal process as a result.

Conclusion

10. For the reasons given above, I determine that the costs application should fail and no award is made.

Gareth Wildgoose

INSPECTOR