



Costs Decision

Site visit made on 27 June 2017

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 11 October 2017

Costs application in relation to Appeal Ref: APP/F1610/W/17/3171382 Land east of Bell Lane, Poulton

- 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 and Mrs Wigram for a full award of costs against Cotswold District Council.
 - The appeal was against the refusal of outline planning application for the erection of up to 9 dwellings and associated access (appearance, layout, landscape and scale reserved for future consideration).
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) advises¹ 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. The PPG explains² that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications or by unreasonably defending appeals.
3. While the Council is not duty bound to follow the advice and recommendations of its professional officers, if a different position is reached, the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
4. The Council's reason for refusal is that the proposal would exacerbate the existing foul drainage problems, which in turn would lead to increased risk of flooding elsewhere. Flooding and surcharge of the sewerage system is an identified concern because of historic connections and possibly misconnections of surface water drainage to the foul sewer, potential groundwater ingress and sewer maintenance issues.
5. Thames Water (TW) acknowledge that in the past the foul sewerage system in the catchment has been overwhelmed in some locations, following prolonged heavy rainfall and high ground water levels. For this reason TW are undertaking a Drainage Strategy Study for the area which aims to confirm the root cause of the problems, which they say may be surface water connections

¹ Paragraph: 030 Reference ID: 16-030-20140306

² Paragraph: 049 Reference ID: 16-049-20140306

- into a foul only system, and the level of risk within the catchment, so that appropriate interventions can be planned.
6. The Council's concern is that the additional loading on the foul drainage infrastructure would demonstrably increase the discharge into the system by a total of nine additional dwellinghouses. In this regard it is contended that any increase in the flow into the foul sewerage system, prior to completing the required remediation works, would inevitably worsen the current situation. The Council say that TW accept that the development would result in an increase in the loading of the foul drainage system and that the factual basis for the reason for refusal, in the context of the currently unresolved remediation works to the system, is considered to be evidential justification for its precautionary position.
 7. I appreciate that the PPG explains³ that for the purposes of applying the National Planning Policy Framework (the Framework), "flood risk" is a combination of the probability and the potential consequences of flooding from all sources – including overwhelmed sewers and drainage systems. However, the Council's decision is not supported by TW who do not object to the appeal proposal with regard to sewerage infrastructure capacity, and who has confirmed that the foul water increase associated with this development is so small that the impact cannot be assessed by hydraulic modelling. TW state that the foul flow from the proposed development will take up only a fraction of the pipe capacity (less than 1%) and as such the impact on existing customers is considered to be negligible. Moreover, the Council's professional officers and the Lead Local Flood Authority have not objected to the appeal proposal.
 8. Therefore, whilst I fully appreciate the concerns and anxieties of the local community on this issue, I find that the Council has failed to produce evidence to substantiate its reason for refusal on the basis of foul drainage and flood risk.
 9. I appreciate that the Council is able to demonstrate a five-year supply of deliverable housing sites. Nevertheless, the Council acknowledge that relevant Local Plan Policy 19 is out-of-date in the context of the Framework and as such the tilted planning balance of paragraph 14 of the same is engaged. Even though, with regard to Footnote 9 of paragraph 14, I have not found any specific policies in the Framework which indicate development should be restricted, I do not consider it amounts to unreasonable behaviour to invite me to consider this.
 10. In applying the tilted balance, it will be seen from my decision that the adverse impacts would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework, taken as a whole, and as such the proposal would amount to sustainable development.
 11. I therefore find that the Council has not been able to substantiate the reason for its decision, which is unsupported by its technical and statutory consultees. This constitutes unreasonable behaviour contrary to the guidance in the Framework and the PPG and the appellant has been faced with the unnecessary expense of the preparation of an appeal statement and lodging the appeal, using the services of a planning agent.

³ Paragraph: 002 Reference ID: 7-002-20140306

Conclusion

12. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Cotswold District Council shall pay to Mr and Mrs Wigram the costs of the appeal proceedings described in the heading of this decision.

14. The applicants are now invited to submit to Cotswold District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Richard S Jones

INSPECTOR