



Costs Decision

Site visit made on 5 September 2018

by **Rory Cridland LLB (Hons), Solicitor**

Decision date: 1 October 2018

Costs application in relation to Appeal Ref: APP/D0121/W/18/3199616 Land to the North of Leafy Way and Bartletts Way, Locking, Western- super-Mare BS24 8BD

- 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 Bartlett for a full award of costs against North Somerset Council.
 - The appeal was against the refusal of outline planning permission for the erection of 8 new chalet bungalows.
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Decision

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

Reasons

2. The Planning Practice Guidance ("the PPG") advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. Furthermore, it makes clear that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter of the appeal, for example by failing to provide evidence to substantiate the reasons for refusal.
3. The application alleges that, notwithstanding the conflict with the adopted settlement strategy, the Council has acted unreasonably in refusing planning permission due to its failure to take into account the wider sustainability of the site. This is largely based on the Council's incorrect assessment of the housing land supply at the time of determination as well as its approach to a previously refused, and substantially similar, application which was previously refused solely on the grounds of highway safety.
4. It is clear from the written evidence that, at the time of the first application, the Council considered that, as it was unable to demonstrate a five year supply of housing land, the conflict with the adopted settlement strategy did not significantly or demonstrably outweigh the identified benefits. This left the concerns regarding highway safety which the Council accepts have now been overcome.
5. As part of this appeal a single reason for refusal was provided, that being that the proposal would be contrary to Policies CS14 & CS33 of the Core Strategy. While I acknowledge that it is reasonable for an applicant to assume that if he can overcome the sole reason for refusal permission would be forthcoming, at time of its determination, the Council considered that it was able to

- demonstrate a five year supply of deliverable housing sites. In such circumstances, I do not consider it unreasonable of them to have determined the application in accordance with the Development Plan and afforded the proposal's conflict with Policies CS33 & CS14 considerable weight. Indeed, where a Council refuses a planning application because it is contrary to the provisions of the development plan, it is exercising its Planning and Compulsory Purchase Act 2004 section 38(6) duty, giving reasons which are entitled to some weight and such a decision will, in many cases, not be unreasonable.
6. During the course of the appeal, the Council accepted that, in light of the Laney Drove Decision¹, it could not demonstrate a five year supply of housing land. However, I do not consider a mistake in this respect constitutes unreasonable behaviour. It merely engages the tilted balance set out in the National Planning Policy Framework and requires an appropriate assessment as to whether the benefits of the proposal are significantly and demonstrably outweighed by the adverse impacts.
 7. While I am mindful that the Council has maintained that the adverse impacts of the development would significantly and demonstrably outweigh the benefits, this is a matter of planning judgement. Although my decision makes clear that I do not consider that to be the case, the Council's reasons for reaching a different conclusion were cogent and not entirely without merit.
 8. Accordingly, I am not persuaded that the Council has acted unreasonably in the circumstances and, as such, conclude that an award of costs would not be justified.

Conclusion

9. For the reasons set out above, and having had regard to all other matters raised, I conclude that the application for an award of costs should be refused.

Rory Cridland

INSPECTOR

¹ APP/D0121/W/17/3184845.