The Planning Inspectorate

Costs Decision

Hearing Held on 26 November 2019
Site visit made on 26 November 2019

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 January 2020

Costs application in relation to Appeal Ref: APP/A2525/W/19/3229241
Fleet Garden Centre, Fleet Road, Fleet, Spalding PE12 8LD

- 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 Applegate Homes (Lincs) Ltd for a full award of costs against South Holland District Council.
- The hearing was in connection with an appeal against the refusal of planning permission for demolition of existing site and proposed residential development and associated works.

Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) 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 appellants refer to pre-application advice which was supportive of proposed infill housing development. However, the Council has accepted that this advice was mistaken as it was based on a different site. This was referred to in the Officer's report on a previous planning application for the appeal site as well as for the application which led to this appeal. The Council has therefore clearly set out the reasons why its decision does not follow the pre-application advice.

4. The Guidance is clear that pre-application advice is not binding on the Council and cannot pre-empt the decision making process or outcome. Whilst such advice can be a material consideration, the Council has set out why the advice was not material to its consideration of the proposal. I have some sympathy with the appellants' frustration with the Council's initial error on this matter, particularly as the location of the site was queried as part of the pre-application process. However, the Council has accepted that this advice was mistaken as part of its consideration of planning applications for this site and in that regard I do not consider it has behaved unreasonably in reaching the decision which led to this appeal.

5. The appellants refer to the extra costs of preparing a full planning application as opposed to an outline application. However, even if an application had been

submitted in outline, there is no certainty that this would have identified the issues in respect of the effect on the character and appearance of the countryside, which may only have become apparent on the submission of reserved matters. Furthermore, the appellants own evidence in respect of a flood risk assessment also refers to the preparation of the Sequential and Exception Tests which have not been undertaken. Therefore, even if an application had been submitted in outline, I am not persuaded that this would have avoided the preparation of further details and a planning appeal.

6. I am also mindful that there has been an intervening refusal of planning permission between the pre-application advice and the application which forms the basis of this appeal. The Council's stance on the pre-application advice and its concerns in respect of the site's location in the countryside would therefore have been apparent to the appellants prior to the submission of the appeal proposal, giving them the opportunity to resubmit a proposal via an outline application.

7. With regards to the issue of previously developed 'brownfield' land (PDL), I have disagreed with the Council's assessment that part of the site is in a horticultural use. However, the issue of PDL is not an overriding determinative factor in respect of the other issues raised by the appeal proposal. Whilst I have disagreed with the Council on the extent of PDL within the site, this has not led to the submission of an appeal which could otherwise have been avoided.

8. The appellants contend that political pressure affected the process for determining the proposal and the final decision. However, it is for the Council to decide the process by which it determines a planning application, and no evidence has been provided to me that the process in this case was contrary to the Council's agreed procedures. Furthermore, I have concluded that the appeal should be dismissed and therefore do not consider that the Council has behaved unreasonably in refusing the planning application for the reasons it gave.

9. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is not therefore justified.

David Cross

INSPECTOR