
Costs Decision

Inquiry opened on 15 April 2015

Site visit made on 3 June 2015

by Alan Woolnough BA(Hons) DMS MRTPI

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

Decision date: 6 July 2015

Costs application in relation to Appeal Ref: APP/R3325/A/14/2224654 Land off Dancing Lane, Wincanton, Somerset BA9 9DE

- The application is made under the Town and Country Planning Act 1990 as amended, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Oxford Law Ltd for a full award of costs against South Somerset District Council.
 - The Inquiry was in connection with an appeal against the failure of the Council to issue a notice of its decision within the prescribed period on an application seeking outline planning permission for the erection of up to 25 dwellings.
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Formal Decision

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

The Submissions for Oxford Law Ltd

2. The application is made with reference to paragraphs 029, 031, 032 and 048 of the costs guidance contained in the DCLG's Planning Practice Guidance (PPG). However, it is readily apparent that the references intended by the Applicant are, in fact, paragraphs 028, 030, 031 and 047. It seeks a full award of costs in relation to the Council's perceived unreasonable behaviour in failing to determine the subject planning application and subsequently opposing the proposed development on appeal. It also seeks a partial award in the event that I find only part of the Council's behaviour to have been unreasonable.
3. As the application was made in writing and was not supplemented orally at the Inquiry I will not summarise its content here. The Applicant's final comments on the Council's response to the application reiterated the case for the appeal site occupying a sustainable location and placed emphasis on the provisions of Policy SS5 of the South Somerset Local Plan 2006-2028 (LP). They also clarified that the Applicant had stated that Members had no reason to refuse planning permission, rather than saying that they were obliged to grant it.

The Response by the Council

4. A costs application of this kind must be based on one of the grounds set out in the relevant guidance. The Applicant asserts that the Council has failed to substantiate its reasons for contesting the appeal and that these are immaterial. However, the essence of the case for costs is not, in fact, based on

- an argument that reasoning was not explained in evidence or adequate witnesses not produced.
5. Rather, the essence of the Applicant's case is that, according to LP Policy SS5, land on edge of Wincanton should be treated as accessible and sustainable. If this was correct, the Council would have been obliged to say that the appeal could not be dismissed on accessibility grounds as the site location must be regarded as sustainable in principle. However, that would verge on the absurd as an interpretation of policy.
 6. The 'permissive approach' prescribed by LP Policy SS5 means that, in principle, planning permission may be granted on this site for housing development. However, it does not mean that it *should* be granted. Nor does the policy say that, pending adoption of the Council's Site Allocations Development Plan Document, *all* greenfield sites on the edge of Wincanton should be developed for housing. Rather, it confirms that housing development is acceptable as long as there is no conflict with other planning objectives.
 7. With regard to the latter, the Council's reasoning to the effect that there is overriding conflict is rational and sustained. Concerning the issue of historic heritage, there is nothing to show that the Applicant has met the relevant policy tests, despite undertaking a redesign. Outstanding design and layout issues should be addressed now and not at the reserved matters stage. Loss of agricultural land is a minor matter. Even if it is found that this is not a useable agricultural site, this in itself could not justify a grant of planning permission. The Council's case on highway safety was supported by professional evidence, substantiated and fully explained.
 8. As for sustainability, the Applicant points out that that this was a Members' decision taken against officers' advice. Nonetheless, the overriding position is that Members are entitled to conclude on this issue for themselves, irrespective of professional advice. They know the site and its accessibility and frequently do take a different view to officers. That is the whole point of the democratic process. The Applicant says that Members were obliged to grant planning permission on this site. However, this is incorrect. The position is simply that there was a justifiable difference of opinion between Members and officers. Even if the Inspector reaches a different conclusion to Members, that is not a reason for an award of costs.
 9. Accordingly, there is no fundamental error of law in way this decision was approached by the Council. Members were entitled to exercise their own personal judgment and have supported all components of that judgment with evidence. Unreasonable behaviour leading to unnecessary or wasted expense has not therefore occurred.

Reasoning

10. 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 or wasted expense in the appeal process. The essence of the Applicant's claim is that the Council failed to produce evidence which provides a respectable basis for its opposition to the appeal.

11. With regard to housing need, it is common ground between the main parties that the requirement to provide a five year supply of housing land in the District is currently just about met, the Appellant having chosen not to pursue an argument to the effect that the 20% buffer requirement prescribed by the National Planning Policy Framework should be applied to the backlog in supply. This arises primarily from the Council's evidence, which I find to substantiate the agreed stance. For the reasons set out in my decision on the appeal, I find the Council's marginal housing land supply position to be reflected in the 'permissive approach' prescribed by LP Policy SS5. The Council was not therefore obliged to attribute additional weight to it.
12. I have not ultimately agreed with the Council that the appeal proposal is so unsustainable that dismissal of the appeal would be justified on those grounds. Nonetheless I am satisfied that, in presenting evidence on that issue, it had regard to all aspects of sustainable development. The economic benefits of the scheme were addressed adequately by the relevant Council witness at the Inquiry. Findings on the question of locational sustainability and accessibility are essentially matters of fact and degree that are open to interpretation and on which judgments must be reached, having regard to factors such as distances to essential facilities, local topography and the Applicant's Travel Plan Statement.
13. Although I have reached a different conclusion to the Council in relation to some of those matters, I acknowledge that it was entitled to conclude otherwise and was able to substantiate its stance with reference to cogent evidence. The influence of topography on walking and cycling habits is particularly difficult to calibrate in an objective way and, consequently, this alone justifies contrary findings. Unlike the Applicant I have not given significant weight to the aging sustainability appraisal, for the reasons set out in my appeal decision.
14. The Council's case on highway safety was supported by substantial professional evidence. Whilst I have found the Applicant's arguments to the contrary more persuasive, I am nonetheless satisfied that the Council was able to justify taking a different view by reference to relevant guidance which, again, is open to a degree of interpretation and flexibility in application. Contrary to the Applicant's contention it did present, albeit unsuccessfully, an arguable case.
15. Technical evidence is not essential to reach a view on the effect that the appeal proposal might have on the setting of Verrington Lodge. This again is largely a matter of individual judgment and there is nothing wrong in principle with Members reaching a different conclusion to their conservation officer. The reasons for that conclusion were explained competently and succinctly by the relevant witness and, even though I have not endorsed that assessment, I find that the Council was able to substantiate its stance in that regard. Nothing before me suggests that it somehow neglected to have regard to the relevant legal and policy tests.
16. I therefore find that the Council's behaviour in relation to the above matters was not contrary to paragraph 047 of the relevant section of the PPG or in conflict with case law arising from the judgment in *R v SSE ex parte North Norfolk DC* [1994] 2 PLR 78 and, accordingly, was not unreasonable. However, notwithstanding this, I take a less favourable view in relation to the question of the potential loss of best and most versatile agricultural land. The Council's

case in this regard was particularly weak. It is a matter of fact that the appeal site contains Grade 1 and 3a agricultural land, but the crucial questions in relation to this issue are whether, irrespective of soil quality, the land as a whole is suitable for farming in practice and whether the 'no build zone' would present realistic agricultural options should the appeal proposal be built out.

17. These are again issues that are open to interpretation, having regard to factors such as the size, shape and topography of the site, in relation to which there is legitimate scope for differing judgments to be reached. However, the Council's written evidence was sparse in this regard and concessions were made by the relevant witness during cross-examination to the effect that there was no conflict with national or local policy in this respect. Inevitably, this raises the question of why this reason for opposing the appeal was pursued in the first place. It was unreasonable in the terms of paragraph 047 of the relevant section of the PPG for the Council to do so and the Applicant will have incurred unnecessary expense in addressing the issue in written and oral evidence.

Conclusion

18. I conclude that the Council did not, as alleged, produce vague, generalised or inaccurate assertions about the proposal's impact or fail to review its case promptly following the appeal, other than in relation to the issue of agricultural land. It did not therefore, without good reason, prevent and delay development that should clearly have been permitted. Moreover, Members were entitled to reach a different view to their professional officers and, for the most part, the Council was able to substantiate that decision.
19. Accordingly, I further conclude that unreasonable behaviour on the part of the Council resulting in unnecessary or wasted expense has been demonstrated only in respect of the issue of agricultural land. A partial award of costs is therefore justified in relation to that issue alone.

Costs Order

20. 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 South Somerset District Council shall pay to Oxford Law Ltd the costs of the appeal proceedings described in the heading of this decision, limited to those costs arising from references made in evidence on the Council's behalf to the loss of best and most versatile agricultural land as a consequence of the appeal development, both at the Inquiry and in written submissions.
21. Oxford Law Ltd is now invited to submit to the Council, to which 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.

Alan Woolnough

INSPECTOR