
Costs Decision

Hearing held on 9 January 2015

Site visits made on 8 and 9 January 2015

by Roger Pritchard MA PhD MRTPI

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

Decision date: 27 January 2015

Costs application in relation to Appeal Ref: APP/R3325/A/14/2223834 Land South of Bayford Hill, Wincanton

- 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 Hopkins Developments Ltd for a full award of costs against South Somerset District Council.
 - The hearing was in connection with an appeal against the refusal of the Council to grant planning permission for the erection of up to 44 dwellings, provision of public open space, access and other ancillary development.
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Decision

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

The submissions for Hopkins Development Ltd

2. The applicant relied on section 16-20140306 of the Planning Practice Guidance in respect of the circumstances of unreasonable behaviour by the Council that warranted a full award of costs against the Council.
3. The Council had advanced two reasons for refusing the original application – that the proposed development would fail to maintain important views across Blackmore Vale and that it could not ensure a suitable standard of amenity.
4. In respect of the first reason for refusal, the Council had failed to produce evidence to substantiate its concerns. The applicant had submitted detailed landscape and visual evidence and had entered into discussions with the relevant Council officers satisfying them that the proposed development could be delivered whilst maintaining the valued views. In rejecting their officers' advice, members were under an obligation to produce clear and cogent evidence as to why they disagreed with that advice. They did not do so. Instead, their evidence was restricted to a series of vague, generalised and inaccurate statements supported by no objective analysis.
5. Furthermore, the Council's evidence at no point acknowledges that many of its concerns could be dealt with at reserved matters stage when scale, layout and design could and would be dealt with in detail. The application was for '*...up to a maximum of 44 dwellings...*' and the Council would be able to exercise sufficient control to guarantee the protection of the important views when considering the reserved matters.
6. In respect of the second reason for refusal, the Council failed to specify its concerns, let alone support the reason with any objective analysis. There was

no explanation of why the proposal was unacceptable and an apparent lack of recognition that similar arrangements had proved acceptable elsewhere in the town. Only one specific relationship was quoted but no separation distances were provided and there was no analysis as to why the relationship was unacceptable. It was untenable to suggest that the entire scheme was undermined by a single relationship that could be amended at reserved matters stage.

7. In summary, where Councils choose not to follow the technical advice of their officers, they must show '*...reasonable planning grounds...*' for not doing so. The Council has not done so here and failed to provide relevant and reliable evidence to support its decision.
8. A full award of costs against the council was entirely justified.

The response by South Somerset District Council

9. The Council refuted any suggestion that it had failed to put forward evidence to support its case. On the contrary, in respect of the first reason for refusal, it had fully substantiated its concerns, focusing on the widest interpretation of the views that it believed would be damaged. By contrast, the applicants had chosen to use the narrowest possible terms to define the areas of concern.
10. Its reasons for refusal were not vague and generalised in terms of responding to an outline application where many of the key issues were inevitably addressed in less than detailed terms. The CGI evidence put forward by the applicants had not reassured Councillors. Instead, it had highlighted their concerns. There had been some suggestion that the Council might have assuaged its concerns by imposing conditions on the application further limiting the numbers of dwellings, restricting the form of developments to bungalows etc. This was unrealistic and would have simply led to an appeal against such conditions.
11. The Council rejected any charge of inconsistency. Every case had to be decided on its specific merits and the particular topography of the site and its relationship to existing, neighbouring developments differed from the examples the applicants had quoted.
12. Finally, the Council's reasons for refusal should not have come as any surprise to the applicants. Although Council officers had recommended approval of the original application, they had also emphasised throughout the pre-application discussions that the matters on which the application was refused would concern members and that they would be looking for a low density, low level development.
13. The Council had not acted unreasonably and there was no justification for an award of costs against it,

Reasons

14. This application for costs was made and responded to on the basis of the advice in section 16-20140306 of the Planning Practice Guidance, which has superseded Circular 03/2009. However, it remains the position that, irrespective of the outcome of an 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.

15. The first reason for refusal advanced by the Council hinged on a matter, the protection of views across the appeal site to Blackmore Vale, the appraisal of which was highly subjective. The applicant put forward evidence by way of CGI interpretations of the proposed development's impact that could be and was interpreted by different parties in very different ways. The applicants' case that the long-distance views valued by local residents and the Council were clearly maintained was set against the latter's concern that these views would be seen in so different a context that they would cease to maintain their value.
16. This was an outline application where only access was to be considered at this stage. Consequently, the applicants' case that amendments to the scheme could resolve detailed concerns at reserved matters stage was set against Council members' failure to be persuaded that the overall form of the development could be delivered satisfactorily. Ultimately, that seems to me to be a matter of planning judgment and the Council did not act unreasonably in refusing the original application in relation to the first grounds cited.
17. In respect of the second reason for refusal, the applicant seems to me to have greater grounds for suggesting that the Council was too vague in its explanation of what its concerns were. However, I was conscious throughout the discussion of the merits of the proposed development of how far the two reasons for refusal were interlinked. Greater efforts to protect the valued views might only be achieved at the expense of more harm to the amenity of existing residential neighbours.
18. I am therefore not particularly surprised at members taking a somewhat different approach to their officers. Furthermore, although I disagree with their conclusions and consider that they might have expressed their reservations more clearly, I conclude that neither their decision to go against officers' advice nor the reasons for refusal that they advanced sufficiently constitute unreasonable behaviour as to warrant an award of costs.

Conclusion

19. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in section 16-20140306 of the Planning Practice Guidance, has not been demonstrated.

Roger Pritchard

INSPECTOR