



Costs Decision

Site visit made on 20 November 2018

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2018

Costs application in relation to Appeal Ref: APP/T2350/W/18/3209520 Croftlands, Broad Meadow, Chipping PR3 2GH

- 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 Ms J and I Seed for a partial award of costs against Ribble Valley Borough Council.
 - The appeal was against the refusal of planning permission for the erection of four dwellings (three net new dwellings).
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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 (the Guidance) explains 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. To be successful, an application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense in order to be successful. Parties in the appeal process are normally expected to meet their own expenses.
3. The Guidance sets out examples of unreasonable behaviour which may lead to a substantive award against a local planning authority¹. Having regard to this, the applicant considers that the Council has acted contrary to, or not followed, well-established case law; not determined similar cases in a consistent manner; and made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. A response from the Council was made in writing, which the applicant has responded to. I have had regard to these submissions in reaching my findings.
5. The Council's position in respect of whether it could demonstrate a five-year supply of deliverable housing sites at the time when the planning application was determined was not set out within the Officer's Report. This was very surprising given the findings of the Longridge appeal decision² which was issued roughly a month before the Council reached their decision on the planning application. The Longridge decision explored in some detail whether or not the Council could demonstrate a five-year supply of deliverable housing

¹ Planning Practice Guidance, Paragraph: 049 Reference ID: 16-049-20140306

² Appeal Decision Ref: APP/T2350/W/17/3186969

- sites. While the Council disagrees with the findings of that decision, no alternative evidence was presented as part of the Officer's Report. Nor was the appeal decision subject of judicial review. The findings of the Longridge decision should have been considered in reaching a view on the development proposed at the appeal site. Logically, this would have taken the Council to paragraph 14 of the now replaced National Planning Policy Framework (the Framework). Nevertheless, I agree with the Council that the outcome of the planning application may not have changed given their stance about the proposal's effect on the Forest of Bowland Area of Outstanding Natural Beauty (AONB). This meant that there were specific policies in the Framework that indicated development should be restricted.
6. I understand the applicant's frustration with the Council in this respect, especially as it is the Council's role to determine the planning application in accordance with the development plan, planning law and guidance. However, the Guidance is clear that costs may not be awarded for the period during the determination of the planning application. If the applicant is unhappy with the Council's approach, then this should be raised directly with the Council in the first instance.
 7. Costs can be awarded in relation to unnecessary or wasted expense at the appeal, but the Council set out a revised position in their Appeal Statement. They accepted that they could not demonstrate a five-year supply of deliverable housing sites. Sufficient explanation has also been forthcoming about the proposal's impact on the AONB. Hence, even if I determined that a five-year supply of deliverable housing sites could not be demonstrated, and the relevant development plan policies were out-of-date, the Council's stance in respect of paragraph 11 of the revised National Planning Policy Framework was reasonable, given footnote 6.
 8. It is also important to recognise that the Council did respond to a further change of circumstances following the publication of the Council's revised Housing Land Availability Study. In short, the Council's position when I determined the appeal was that they could demonstrate a five-year supply of deliverable housing sites. Notwithstanding the merits of this, it simply underlines the moveable nature of this form of evidence.
 9. The appeal scheme was a standalone development proposal, even though there was some overlap with an earlier planning permission³ granted by the Council. As the applicant accepts, the appeal scheme brings its own considerations, and it is for the decision-maker to consider those. The second reason for refusing planning permission related to the ability of future occupants to access local services and facilities without placing further reliance on the private vehicle. Even though there have been subsequent changes to development plan policies, there was little or no analysis from the Council on what services and facilities future occupants could access on foot or by other modes of transport.
 10. I found in the applicant's favour on this issue based on future occupant's ability to walk to the facilities and services in Chipping using lit footways. The Council did not set out or explain the effect of the development in terms of the day-to-day experience of future occupants. Added to this, no such concerns were raised when planning permission was granted in 2013 for three dwellings. One of these dwellings was within the same site edged red, while the other two

³ Ref: 2/2013/0571

were next to it. I acknowledge that the two schemes do have their differences, but they are located immediately next to one another. Also, the Council did not explain whether there had been any changes to the range of local services and facilities in Chipping or how future occupants may access them. Thus, the Council made vague, generalised and inaccurate assertions about the proposal's impact which are unsupported by any objective analysis.

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a partial award of costs is justified in respect of the ability of future occupants to access local services and facilities.

Costs Order

12. 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 Ribble Valley Borough Council shall pay to Ms J and I Seed, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Ribble Valley Borough 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.

Andrew McGlone

INSPECTOR