

Costs Decision

Hearing held on 10 May 2016

Site visit made on 10 May 2016

by Alexander Walker MPlan MRTPI

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

Decision date: 12th April 2017

Costs application in relation to Appeal Ref: APP/L3245/W/16/3142479 Land North of Station Road, Dorrington, Shrewsbury, Shropshire SY5 7LH

- 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 Shropshire Council for a full award of costs against Mr James and Mr Edward Davies of Messrs Davies.
 - The hearing was in connection with an appeal against the refusal of planning permission for mixed residential development.
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Decision

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

The submissions for Shropshire Council

2. The costs application was made in writing with final comments made orally at the hearing following the submission of the appellants' written rebuttal. The basis of the application is that the proposal is the resubmission of a previous similar scheme that was refused and subsequently dismissed on appeal, whereby the Inspector found that it did not represent sustainable development. Following the previous appeal decision, there has been no change in circumstances other than the SAMDev has since been adopted, therefore strengthening the Council's position.

The response by Mr James and Mr Edward Davies of Messrs Davies

3. In response to the Council's submission, the appellant submitted a written rebuttal at the Hearing. The appellants state that housing land supply was a key element of the previous appeal. Following the appeal decision, the Local Plan has changed, by way of its adoption, and the interpretation of national policy has been clarified through recent appeal decisions and case law. There was no suggestion by the previous Inspector that the development of the site would be permanently unacceptable and does not rule out the site as 'unsustainable'.

Reasons

4. Planning Practice Guidance 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.
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5. The proposal is similar to the previously dismissed proposal. However, I have had regard to a number of matters that have since arisen. Firstly, whilst the SAMDev has now been adopted, and on the face of it strengthens the Council's case, the appellants argue that its policies weigh in favour of the proposal and due to its status it can be attributed greater weight than previously. Whilst I appreciate that the Council do not agree with the appellants' interpretation of the relevant policies, they have not behaved unreasonably in making their case. The appellants' evidence is complete, precise, specific and relevant to the application. It clearly states the policies of the development plan that the proposal would conflict with. Reference has also been made to various appeal decisions and High Court cases that are material to the consideration of the proposal that were not previously available.
6. Furthermore, recent appeal decisions have raised some doubt over whether or not the Council have a five year housing land supply. Whilst these decisions have been somewhat surpassed by the publication of the Council's publication of the Full Objectively Assessed Housing Need Report (FOAHN) on 6 July 2016 and the Five Year Housing Land Supply Statement on 26 August 2016, the appellants have not been unreasonable in submitting evidence in support of their case with regard to this issue.
7. I acknowledge the Council's dissatisfaction with the appellants' submission of a previously dismissed proposal. Whilst the proposal has not changed, there are a number of matters that have and the appellants have not behaved unreasonably in pursuing these, which weren't considered in the previous appeal.
8. 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 an award for costs is therefore not justified.

Alexander Walker

INSPECTOR