

Costs Decision

Inquiry held on 9 and 10 August 2016

Site visit made on 10 August 2016

by Jameson Bridgwater PGDipTP MRTPI

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

Decision date: 29 September 2016

Appeal Ref: APP/P1560/W/15/3141016

Station Field, Plough Road, Great Bentley

- 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 Mr A Irwin (Moonlight Hollow Ltd) for an award of costs against Tendring District Council.
 - The appeal was against the refusal of outline planning permission for a proposal described as 'Outline application for a mixed use scheme comprising up to 150 dwellings and open space, a class B1 Employment Area and structural landscaping'.
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Decision

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

Reasons

2. National Planning Practice Guidance (the Guidance) advises that 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 appeals process.
 3. The Guidance further sets out that parties in planning appeals and other planning proceedings normally meet their own expenses. Additionally the Guidance is clear that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
 4. The appellant's application for an award of costs and the Council's submissions in response were both submitted in writing at the Inquiry.
 5. The appellant states that the Council acted unreasonably on the basis that they considered that the appeal was wholly unnecessary. They set out that the abandonment of emerging policy and the Council continuing to defend the reason for refusal relating to the level crossing despite the withdrawal of the Network Rail objection resulted in unnecessary expense across the board in relation to conference time between the appellant, witnesses, Counsel and in preparing proofs of evidence.
 6. I have a degree of sympathy for the appellant in that the appeal process was complicated by the Council's decision to withdraw elements of objection to the proposal based on the now abandoned emerging Tendring District Plan 2012. Moreover, I accept that this would have required time and expense to address any potential effect or implication in relation to their appeal. Notwithstanding
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this the effect of the proposal on Great Bentley was still a matter that was in dispute and whilst urbanisation was not specifically cited as a reason for refusal it was little more than articulating the potential change in character to the appeal site that was a component part of the overall reason for refusal. Furthermore, whilst Network Rail withdrew their objection to the appeal proposal in 2015, details in relation to the feasibility of a diversion or footbridge were not established until the summer of 2016. Consequently, I conclude that the Council has acted reasonably in citing and then maintaining its objection to the proposal based on the first two reasons for refusal.

7. The appellant further advanced that there was delay in notifying the appellant of the Council's change in circumstances in relation to the appeal and in particular the decision not to defend the remaining three reasons for refusal (Numbers 3,4,and 5). Whilst I accept that there was some delay in notifying the appellant this was largely due to Council actively managing their case within their constitutional requirements. Moreover, I am satisfied that the appellant was made aware of the Council's reviewed position during the lead in time to the Inquiry and in these specific circumstances I do not consider the Council's actions unreasonable.
8. I agree that the preparation of suggested conditions and the completion of the planning obligation were concluded late in the Inquiry process. Notwithstanding this there is no substantive evidence before me that demonstrates that the Council have acted unreasonably in dealing with these matters.
9. Finally the appellant has stated that the Council's case departed from their original statement of case and that it abandoned and then reintroduced its objection on sustainability. However, whilst I accept that the Council no longer sought to defend the issue of location in relation to public transport and local services, it was not unreasonable for the Council to maintain its objection to the proposal based on sustainability in the context of the National Planning Policy Framework. Consequently, there was broad consistency with the Council's statement of case and as such the Council have not acted unreasonably in these matters.
10. In conclusion, I find that it has not been demonstrated that the Council behaved unreasonably with respect to the substance of the matter under appeal and that the appellant's costs in mounting the appeal were not unnecessarily incurred. For this reason, and having regard to all other matters raised, an award of costs is therefore not justified.

Jameson Bridgwater

INSPECTOR