

Costs Decision

Hearing held on 23 August 2016

Site visit made on 23 August 2016

by Kevin Gleeson BA MCD MRTPI

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

Decision date: 31 October 2016

Appeal A

**Costs application in relation to Appeal Ref: APP/X1545/W/16/3147227
Grove Farm, Stoney Hills, Burnham-on-Crouch, Essex CM0 8QA.**

- 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 Mrs F Pitt for a full award of costs against Maldon District Council.
 - The appeal was against the refusal of outline planning permission for one dwelling including determination of access.
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Appeal B

**Costs application in relation to Appeal Ref: APP/X1545/W/16/3147572
Grove Farm, Stoney Hills, Burnham-on-Crouch, Essex CM0 8QA.**

- 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 Mrs F Pitt for a full award of costs against Maldon District Council.
 - The appeal was against the refusal of outline planning permission for the erection of five bungalows in lieu of existing commercial and agricultural buildings.
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Decision

Appeals A & B

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

Reasons

2. National Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary or wasted expense in the appeals process and that the application needs to clearly demonstrate that this is the case. Unreasonable behaviour may be procedural and/or substantive. The application was made for both appeals together. I have therefore addressed the decision in the same manner.
 3. The appellant is seeking a full award of costs on the basis of both the procedural and substantive nature of the Council's unreasonable behaviour. The application was made in writing and the Council responded in writing. Consequently, there is no need to repeat the cases but where additional comments were made orally these are addressed.
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Procedural Matters

4. The Council withdrew the third reason for refusal following the decision to award costs against it in the Mill Farm appeals. Whilst the report to the Planning Committee on the Appeal A scheme included the third reason for refusal the justification for that reason was not provided within the report. Additionally, there is no evidence that the Council had assessed the suitability of the road in determining the application or that the schemes would unacceptably intensify the use of the road. The claim that the character of the unmade road formed a material consideration at the time of the decision provides insufficient justification to refuse the application on that basis. Consequently, the Council did not provide relevant evidence to support its decision on this matter when the application was determined and behaved unreasonably in not withdrawing the third reason for refusal earlier. Notwithstanding the fact that interested parties had also raised concerns about the use of the road I find that this unreasonableness resulted in the need for additional work to be undertaken by the appellant in the course of the appeal.
5. In respect of the withdrawal of the fourth putative reason for refusal in respect of Appeal B it does not seem unreasonable that the Council made reference to the lack of information to support the loss of employment uses when the appellant had indicated on the application form that such uses were existing and the description of development also referred to employment uses. For this reason I do not consider that the Council acted unreasonably in indicating that this would have been a reason for refusal, and for withdrawing it when the position was clarified by the appellant.
6. In respect of the delay in providing the information as part of a separate questionnaire for Appeal B, as the information appears to have already been provided for Appeal A there is no basis for concluding that the Council behaved unreasonably.
7. With regard to the weight to be given to the emerging Local Development Plan (LDP) I find that some elements of the LDP are unusual but to have a constantly changing position as the plan proceeds through its Examination is not unusual. Whilst the Council can provide a view on how LDP policies should be considered in accordance with paragraph 216 of the National Planning Policy Framework (the Framework) there is a significant body of evidence which suggests the weight to be attached to the emerging LDP which the local planning authority has not taken into account. Nevertheless, in the context of the changing position of the LDP I find that it was not unreasonable for the Council to argue its position with regard to the weight to be attached to emerging policies. Furthermore, it has not been demonstrated that the Council concealed information which was contrary to their case or mislead the appellant.

Substantive Matters

8. There is no evidence that the Council ignored the planning history of Stoney Hills and it is correct that granting planning permission for applications does not render each subsequent application acceptable or of direct relevance. Additionally, it would not be proportionate or relevant to directly relate every development within Stoney Hills to that of the proposed development. There is evidence that the Council did take appropriate account of the outbuildings on site and recognised that the appeal schemes were very different in nature to

any of the other sites where planning permission had been granted. In doing this it is clear that the Council had undertaken an assessment of character in the area. Consequently the Council did substantiate their reason for refusal in respect of harm to the character and appearance of the area and therefore did not act unreasonably in terms of preventing or delaying development that should have been permitted.

9. With regard to the principle of development the Council acknowledged that whilst previous decisions concluded that the development was in a sustainable location, its position at the hearing was that it was able to demonstrate a supply of specific deliverable sites to provide for more than five years' worth of housing against identified housing requirements. Seeking to defend development outside of the settlement boundary on the basis of its five year housing land supply statement was not unreasonable.
10. The Council also argued that Stoney Hills was not a windfall site as permission had not been granted but I fail to see the relevance of this difference of opinion between the parties which is not significant in terms of the costs application.
11. It has been demonstrated that there was unreasonable behaviour resulting in unnecessary expense as described in PPG by the Council in respect of their failure to provide relevant evidence to support its third reason for refusal of each application. As a result, for the reasons given, a partial award of costs on this matter is justified.

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 and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Maldon District Council shall pay to Mrs F Pitt the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the third reason for refusal of each application, such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Maldon District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an 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 Cost Office is enclosed.

Kevin Gleeson

INSPECTOR