
Costs Decision

Site visit made on 12 December 2016

by P W Clark MA MRTPI MCMI

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

Decision date: 22 December 2016

Costs application in relation to Appeal Ref: APP/H1515/W/16/3154871 4 Nags Head Lane, Brentwood, Essex CM14 5NJ

- 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 Brentwood Borough Council for a full award of costs against Mr Paul Savill.
 - The appeal was against the refusal of planning permission for 5 new detached dwellinghouses.
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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 advises 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.
 3. The Council's claim is largely based on the argument that the appeal had no chance of success because of Green Belt policy. But in this case, the application of Green Belt policy is not straightforward as the Council's Costs claim itself indicates by several paragraphs of argument about the meaning of infill and the meaning of openness. My substantive decision also takes a different view to that of the Council on the questions of inappropriate development and of openness. So, it was by no means a foregone conclusion that the appeal had no chance of success because of Green Belt policy. That element of the Council's claim fails.
 4. Of more substance is the argument that the appellant has failed to address the site specific issues arising from the proposal. A proper understanding of his own consultants' reports should have given the appellant a clear realisation of the impracticalities of the proposal as presented and the unreasonability of relying on conditions to resolve them.
 5. In fairness, the implications of the consultants' reports, particularly that of the Flood Risk Assessment, are not spelt out as clearly as they might have been. It does not appear that the Council has ever advised that these would preclude development of the site. Although its fourth reason for refusal spells out the unacceptability of the Noise consultant's recommendations, its fifth, sixth and seventh reasons for refusal, composed in the knowledge of the consultants' reports, are phrased in terms of insufficient information rather than as positive statements of unacceptability.
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6. So, if the Council, in the full knowledge of the Consultants' reports, held back from asserting the unacceptability of developing the site, then it is not unreasonable for the appellant to have continued to hold onto the hope of a permission. Moreover, since the Council's fifth reason for refusal was so phrased but in fact the appellant's Flood Risk Assessment provided comprehensive information, the appellant may have felt justified in thinking that the Council's reason for refusal was mistaken.
7. But that does not excuse the appellant in every respect. The Council's reason for refusal in respect of noise is clear, specific, justified and sufficient alone for me to dismiss the appeal. It has not been addressed by the appellant. That is unreasonable behaviour. Likewise, the appellant's own Preliminary Ecological Appraisal and Bat Scoping Report makes specific recommendations for further work to be done in order for the proposal to succeed. That has not been done, yet the appeal has been pursued. That is unreasonable behaviour. Similarly, the Council's seventh reason for refusal is clear and the Highway Authority's comments on which it is based are specific. Yet the appellant has not addressed these points but has pursued the appeal anyway. That is unreasonable behaviour.
8. The appeal had no chance of success without these matters being addressed. Yet it was pursued anyway. That is unreasonable behaviour. It has resulted in what should have been unnecessary costs to the Council in defending the appeal.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

10. 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 Mr Paul Savill shall pay to Brentwood Borough Council, 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.
11. The applicant (the Council) is now invited to submit to Mr Paul Savill, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

P. W. Clark

Inspector