
Costs Decisions

Site visit made on 12 December 2016

by K R Seward Solicitor

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

Decision date: 04 January 2017

Costs applications in relation to Appeal Refs: APP/Y0435/C/16/3153240 (Appeal A) & APP/Y0435/W/16/3153237 (Appeal B)

41 Ramsons Avenue, Conniburrow, Milton Keynes MK14 4BB

- The application in respect of Appeal A is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application in respect of Appeal B 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 applications are made by Mr Mark Phillips for a full award of costs against Milton Keynes Council.
 - Appeal A was against an enforcement notice alleging failure to comply with conditions Nos 2 & 4 of a planning permission Ref 07/00511/FUL granted on 27 July 2007.
 - Appeal B was against the refusal of planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
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Decision

1. The applications are refused.

Reasons

2. Paragraph 030 of the *Appeals* section of the Planning Practice Guidance (PPG) 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 appellant seeks an award of costs on both procedural grounds relating to the appeal process and substantive grounds relating to the planning merits.
 4. Firstly, the appellant has never received the policies, SPD or other background papers from the Council as part of the appeal process. The Council does not dispute this. Paragraph 047 of the PPG states that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal, for example, by complying with the requirements and deadlines of the process. Examples given of unreasonable behaviour are a lack of co-operation with the other party and delay in providing information. Here, the information has not been provided at all which does amount to unreasonable behaviour.
 5. For costs to be awarded, the unreasonable behaviour must have caused the appellant to incur unnecessary or wasted expense in the appeal process. The policies and SPD are listed in the enforcement notice and the Council's decision
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- notice. The appellant identifies 3 hours spent in relation to this matter and is aggrieved that the Planning Inspectorate did not allow a delay until the documents were provided. A quick search of the Council's website would have led to the policies and SPD within a matter of minutes. The delegated report containing the Council's analysis was also available on its website. Whilst this does not excuse the Council's failure to provide copies to the appellant, it did afford the appellant a quick and easy means to obtain the documents without incurring unnecessary expense. There is responsibility on the appellant to act reasonably also and with the documents so readily available, I do not consider that an award of costs is justified in this respect.
6. Secondly, the appellant argues that it was unreasonable for the Council, having secured an extension of time from the Planning Inspectorate, to then submit a short letter confirming that the Council placed reliance on its delegated officer's report.
 7. In fact, although the letter highlighted that the Council's main points were covered in the officer's report, additional points were made in response to the appellant's grounds of appeal. This was done within the extended time limit which had been granted due to the sickness absence of the relevant officer. In such circumstances there has been no unreasonable delay.
 8. Thirdly, in relation to substantive matters the appellant considers that the Council's approach was disproportionate in placing reliance on its 'Houses in Multiple Occupation Supplementary Planning Document' (SPD) in considering one room in an existing House in Multiple Occupation (HMO). The appellant also refers to having incurred costs in securing Counsel's Opinion to demonstrate that the Council's approach was flawed. Such Opinion has not been submitted and so has not influenced the outcome of my decision.
 9. The SPD has been adopted by the Council to supplement its development plan as envisaged in paragraph 153 of the National Planning Policy Framework. Specifically, it aids interpretation of policy H10 of the Milton Keynes Local Plan 2001-2011 which relates to the grant of planning permission for HMO's and provided the basis for imposition of the disputed conditions. Whilst I have not agreed with the Council's ultimate finding this was based on a multitude of factors in a relatively finely balanced case. The SPD was clearly of relevance and the Council drew support for its stance from previous appeal decisions¹. I find no unreasonable behaviour in this regard.
 10. Fourthly, the appellant is critical of the Council's Highways Officer's comments being verbal only and unsupported by analysis or substantial evidence. Paragraph 049 of the PPG provides examples of when a local planning authority may be at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. These include failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about the impact of development, unsupported by objective analysis.
 11. To a large extent the Council relied upon the standards within its newly adopted Parking Standards Supplementary Planning Document, January 2016 which indicated increased demand of 0.5 spaces rounded up to 1 space, when none would be provided. Policy H10 makes provision in the alternative for on-

¹ Most specifically Appeal Ref: APP/Y0435/C/14/2217068 & 2216067

street parking where necessary provided it would not result in unacceptable congestion in the surrounding area. The Council's case in this regard was somewhat vague and poorly made out. However, on balance, the Council's submission was not so lacking in detail to amount to unreasonable behaviour.

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

KR Seward

INSPECTOR