
Costs Decision

Site visit made on 12 December 2016

by Cullum J A Parker BA(Hons) MA MRTPI IHBC

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

Decision date: 16th January 2017

**Costs application in relation to Appeal Ref: APP/W1525/W/16/3156657
Former Garden of Mill Cottage, Mill Road, Stock, Ingatestone,
Essex, CM4 9RU**

- 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 Chelmsford City Council for a partial award of costs against Mr Gary Mead.
 - The appeal was against the refusal of planning permission for the erection of single dwellinghouse.
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Decision

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

Reasons

2. The applicant (the Council) considers that unreasonable behaviour within the substantive category has occurred which has resulted in costs, as the appellant has continued to challenge the Council's housing land requirement and supply positions without taking into account a number of recent public inquiry decisions and High Court challenges within the local planning authority area. To the contrary, the appellant considers that they have provided detailed evidence that addresses these various points. I have proceeded on the basis that the claim seeks a partial award of costs on this 'housing' issue only.
 3. The national *Planning Practice Guidance* (the 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. The costs regime is intended to support a well-functioning appeal system and encourage a proper use of the right of appeal. It is aimed at ensuring that all of those involved in the appeal process behave in an acceptable way and are encouraged to follow good practice, whether in terms of timeliness or in quality of case.
 4. In this case, the appellant was represented by an experienced planning consultancy, which includes built environment professionals who have acted as planning witnesses at Inquiry and have been positively cited in case law. The details of which are provided in the appellants appeal submission.
 5. The problem here was that there was a detailed focus on the housing land supply position by the appellant from the initial application which continued into the appeal stage. This led to the submission of hundreds of pages of evidence on this specific issue for an appeal seeking a single dwelling house.
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This was in addition to the evidence relating to other matters. I note the applicant's view that the appellants challenging of the housing requirement and supply figures was unreasonable. However, the issue is actually much simpler than that. The appellant, represented by an experienced and knowledgeable built environment consultancy, would have been aware of the governments well-establish position of attaching great weight to the importance of Green Belt, as established through the *National Planning Policy Framework*.

6. To justify the harm from inappropriate development, very special circumstances would have to be demonstrated and such a test is a high one as recognised by the Courts. It is very unlikely, though not impossible, that the provision of a single six bedroom dwelling would make such a contribution to the housing land supply of an area that it would represent very special circumstances; irrespective of the degree of weight a decision-maker would afford to policies if there was not a demonstrably deliverable supply of housing land within the same area. That is not to say such circumstances would never occur, but rather to appreciate the realities of the policy framework in practice.
7. Put another way, the appellant would have been more than aware that if the development was inappropriate development in the Green Belt, as the Council argued and the appeal decision found, the chance of it being allowed on appeal would have been slender. The proposal was clearly not in accordance with the adopted development plan and other material considerations, such as national planning policy (which also requires the similar justifications) did not indicate that the decision should have been made otherwise. This being so, there is no substantive justification for the appellant to spend such considerable effort submitting evidence relating to housing land supply and housing requirement figures for a single dwelling house scheme. This evidence was clearly disproportionate to the scale of the development proposed.
8. Furthermore, the appellant continued to submit large quantities of evidence during the appeal process, including nearly 50 multi-paged appendices at the final comments stage. All of this was aimed to demonstrate that the provision of a single dwelling house might provide justification for allowing a new dwelling in the Green Belt or reducing the weight accorded to adopted development plan policies. When considered in this context, in over-concentrating on this housing issue the appellant acted in an irrational and unacceptable way, and such actions resulted in unreasonable behaviour.
9. What is more, the amount of documentation submitted; both at the initial appeal stage and then during the final comments stage, meant that the Council had to address this point in significant detail. Given the scale of the development this was an unnecessary burden on the resources of the Council, who not only had to prepare their own figures, but seek to address the various points made by the appellant on this point. This has resulted in the applicant incurring unnecessary and wasted expense in the appeal process.
10. These actions, therefore, were unreasonable behaviour that resulted in unnecessary and wasted expense for the applicant, as described in the Guidance. I therefore conclude that it has been demonstrated that a partial award of costs – restricted to the Council's costs in the appeal process in the time and paperwork created in preparing for and addressing the housing issue raised by the appellant, including requirement and supply - is justified in this case.

Costs Order

11. 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 Gary Mead shall pay to Chelmsford City Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the preparation and rebuttal of housing land supply and requirement matters during the appeal process; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Mr Gary Mead, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Cullum J A Parker

INSPECTOR