
Costs Decisions

Site visit made on 20 December 2016

by Simon Warder BSc(Hons) MA DipUD(Dist) MRTPI

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

Decision date: 19 January 2017

Costs application A in relation to Appeal Ref: APP/X1545/W/16/3158007 Drinkwater Farm, Maldon Road, Bradwell on Sea, Essex CM0 7HY

- 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 Maldon District Council for a full award of costs against Coldunell Limited (Mr John Aoun).
 - The appeal was against the refusal of planning permission for development of 12 new houses with workshops without complying with conditions 6, 7 and 8 attached to planning permission Ref FUL/MAL/07/00842, granted on appeal under Ref APP/X1545/A/08/2064100, dated 23 June 2008.
-

Costs application B in relation to Appeal Ref: APP/X1545/W/16/3158007 Drinkwater Farm, Maldon Road, Bradwell on Sea, Essex CM0 7HY

- 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 Coldunell Limited (Mr John Aoun) for a full award of costs against Maldon District Council.
 - The appeal was against the refusal of planning permission for development of 12 new houses with workshops without complying with conditions 6, 7 and 8 attached to planning permission Ref FUL/MAL/07/00842, granted on appeal under Ref APP/X1545/A/08/2064100, dated 23 June 2008.
-

Decisions

1. Application A for an award of costs is refused
2. Application B for an award of costs is refused.

Reasons

3. 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.

Application A

4. The Council considers that the appellant behaved unreasonably in submitting an appeal which had no reasonable prospect of succeeding. Further that the appellant has failed to substantiate its position in respect of the first (unsustainable travel patterns) and third (loss of employment opportunities) reasons for refusal and has not submitted a Planning Obligation in order to overcome the second reason for refusal (affordable housing). Therefore, the Council considers that it has incurred unnecessary expense in defending an appeal which should not have been lodged.
-

5. The appellant argues that the Council did not enter into discussions prior to the determination of the application and, therefore, that the appeal provided the first opportunity to respond to the Council's concerns. It provided concise and professional evidence in respect of each reason for refusal and was willing to enter into a Planning Obligation.
6. It is apparent from the Council's appeal statement that its main concern in respect of the first reason for refusal is to do with the sustainability of the travel patterns resulting from the proposal. However, the Council's statement was not available at the time the appeal was made. The appeal was made in response to the decision notice. The wording in the first reason for refusal refers more generally to the sustainability of the location and the cited policies are not specifically concerned with sustainable travel. Nor does the correspondence from the Council prior to the determination of the application set out the Council's concerns clearly¹. The appellant's evidence on this issue, including the Transport Note attached to its statement, does not address the effect on travel patterns resulting from the proposed removal of the direct physical link between the live and work elements. Nevertheless, I have some sympathy with the appellant in formulating its response to what it understood to be the Council's position at the time the appeal was submitted. As such, I find that the appellant did not behave unreasonably in respect of the evidence it submitted on this issue.
7. With regard to the second reason for refusal, the appellant indicated that a Planning Obligation could be used to secure affordable housing, but no Obligation was submitted. Nevertheless, I have found that the emerging development plan policy relied on by the Council to justify the provision of affordable housing carries limited weight and does not amount to a significant change since the grant of the original permission. Therefore, the absence of an Obligation to secure affordable housing provision does not weigh against the proposal. The appellant's behaviour did not, therefore, result in the Council incurring unnecessary costs in defending this issue.
8. The Council's concern regarding the third reason for refusal revolves around the loss of diversity and integration which would result from the proposed provision of a single employment unit rather than, as previously approved, 12 separate workspaces each associated with a dwelling. The appellant's evidence places greater weight on maintaining the quantum of provision and the flexibility which a single unit could provide. I have found that the latter approach would not lead to a loss of employment opportunities. Therefore, the appellant has substantiated its position on this issue.
9. I therefore find that unreasonable behaviour on the part of the appellant resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that a full award of costs is not justified.

Application B

10. The appellant has applied for an award of costs based on the Council's unreasonable behaviour in not engaging proactively prior to the determination of the application and in making an application for an award of costs. I recognise that the Council provided limited responses to the appellant's request for feedback whilst the application was being determined. Equally, it appears that then applicant did not take the opportunity of obtaining formal pre-

¹ Emails attached to the appellant's statement

application advice.

11. In any event, PPG paragraph reference ID: 16-033-20140306 advises that, whilst all parties are expected to behave reasonably throughout the planning process, costs cannot be claimed for the period during the determination of the application. The costs claimed by the appellant in chasing the Council for feedback were incurred as part of the application process and are, therefore, not eligible for an award. Whilst I have not made an award of costs in favour of the Council, its application was not so without merit as to amount to unreasonable behaviour.
12. The appellant also argues that the Council's behaviour resulted in unnecessary reasons for refusal and, therefore, unnecessary costs at the appeal stage. Potentially, the second reason for refusal could have been overcome through the use of a Planning Obligation to secure affordable housing provision. The appellant has also suggested that the other reasons could have been addressed by an Obligation linking the live and work elements of the scheme. The Council disputes whether such an Obligation would meet the tests set out in the Community Infrastructure Levy Regulations 2010.
13. Whether or it would meet the tests, no such Obligation, which could have taken the form of a unilateral undertaking, was submitted at the application or appeal stages. Therefore, I cannot be assured of the appellant's commitment to provide the relevant undertakings and am unable to consider whether they would have overcome some or all of the reasons for refusal. In these circumstances, I cannot be certain that any of the reasons for refusal were unnecessary and that the appellant incurred unnecessary costs.
14. I therefore find that unreasonable behaviour on the part of the Council resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that a full award of costs is not justified.

Simon Warder

INSPECTOR