
Costs Decision

Site visit made on 3 January 2017

by Graham Chamberlain BA MSc MRTPI

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

Decision date: 30 January 2017

Costs application in relation to Appeal Ref: APP/Z1510/W/16/3159441 Land adjacent Boulders, Nether Hill, Gestingthorpe, Essex CO9 3BD

- 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 Mr Roger Spencer for a full award of costs against Braintree District Council.
 - The appeal was against the refusal of planning permission for the erection of a dwelling.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, the National Planning Practice Guidance (PPG) states¹ that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The appeal scheme before me relates to a resubmitted planning application. It was resubmitted following an unsuccessful appeal² in an attempt to address the concerns identified. The Council had refused the previous planning application as it considered the dwelling then proposed would be unsustainably located and harmful to the character and appearance of the area.
4. Notwithstanding the Council's concerns, in Paragraph 10 of his decision the Inspector concluded that the site's accessibility to services meant that the proposed dwelling would be located in a sustainable location. Nevertheless, he then went on to conclude that the dwelling would harm the character and appearance of the area and this resulted in an overall conclusion that planning permission should be withheld. In light of this conclusion, the appellant reasonably concluded that a revised application that addressed the design limitations identified by the Inspector would be likely to be granted planning permission.
5. The resubmitted scheme that was presented to the Council, and is now the subject of this appeal, proposes such an alternative design, which the Council did not find objectionable. Nevertheless, and notwithstanding the Inspector's decision, the Council again refused the appeal scheme being of the view the

¹ Paragraph: 028 Reference ID: 16-028-20140306

² APP/Z1510/W/15/3008391

proposed house would be inaccessible to local services and thus in an unsustainable and isolated location.

6. The PPG states³ that a substantive failing in respect of a Local Planning Authority's conduct may arise when it persists in objections to a scheme, or elements of a scheme, which the Secretary of State or an Inspector has previously indicated to be acceptable. Consequently, the Council's reason for refusal, which was predicated on a finding that the appeal site is in an inaccessible and unsustainable location, when an Inspector had already found that it is in an accessible and sustainable location, was unreasonable and thus a substantive failure of significance.
7. This is because the Council did not refer to any material changes in local or national planning policy that could have otherwise justified its departure from the previous Inspector's conclusions. Nor did the Council refer to any physical changes in and around the appeal site that could have justified its conclusion either. For example, the closure of those facilities referred to in Paragraph 9 of the previous Inspector's decision or public transport being curtailed. Such factors could have affected the appeal site's accessibility to services and possibly justified a conclusion that differed from the previous Inspector's. However, no evidence was presented to demonstrate this and it was not sufficient to merely note the previous appeal decision as a material consideration. As such, the Council's decision was unreasonable and consequently the appellant's costs in preparing and submitting an appeal have been incurred unnecessarily.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

9. 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 enabling powers in that behalf, IT IS HERBY ORDERED that Braintree District Council shall pay Mr Roger Spencer, the costs of the appeal proceedings, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision. Mr Spencer is now invited to submit to Braintree District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching 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.

Graham Chamberlain,
INSPECTOR

³ Paragraph: 049 Reference ID: 16-049-20140306