

Costs Decisions

Hearing held on 28 March 2017

Site visit made on 28 March 2017

by S M Holden BSc MSc CEng MICE TPP FCIHT MRTPI

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

Decision date: 11th April 2017

Costs application in relation to Appeal Ref: APP/X1545/W/16/3154913 The Old Dairy, Broad Street Green road, Great Totham, Essex CM9 8NX

- 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 partial award of costs against Mr A Lawson.
 - The hearing was in connection with an appeal against the refusal of planning permission for a proposal to replace existing B1 industrial building with proposed children's day nursery and one dwelling.
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Costs application in relation to Appeal Ref: APP/X1545/W/16/3162966 Land to the west of The Old Dairy, Broad Street Green road, Great Totham CM9 8NX

- 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 partial award of costs against Mr A Lawson.
 - The hearing was in connection with an appeal against the refusal of planning permission for a proposal described as "one dwelling".
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Decision

1. The application for costs in relation to both proposals is refused.

Preliminary Matters

2. The two proposals that were the subject of the hearing were on sites immediately adjacent to one another and in the ownership of the same appellant. I was appointed to determine the two appeals and held a hearing into both proposals on the same day in order to avoid unnecessary repetition. I have therefore determined the applications for costs from both parties on the basis that they were related to the two proposals considered together.

The submissions for the Council

3. The Council had been unable to confirm its agreement to the Statement of Common Ground (SoCG). This arose from the appellant's failure to adhere to the deadlines for producing the appropriate documents and commenting on suggested changes. Consequently, there was a failure to agree a number of factual matters, including those that related to the policy background that were essential to the determination of the appeal.
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4. This caused the Council wasted expense in its attempts to suggest changes to the SoCG, and increased the number of issues that had to be addressed at the hearing.

The response by Mr A Lawson

5. The thrust of the appellant's response to the Council was that the lack of agreement to the SoCG made no difference to the Council's submissions in relation to either appeal.

Reasons

6. 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.
7. The purpose of the SoCG is to enable the hearing to focus on issues of dispute between the parties. The latest version of the SoCG was dated 21 March 2017. At the hearing I was also provided with a copy of track changes that the Council had made to an earlier version of the SoCG, dated 12 January 2017. It is apparent from reading these documents that there were a significant number of outstanding matters between the parties that would have made agreement prior to the hearing difficult to achieve.
8. However, none of these matters came as a particular surprise to me, as I had expected the hearing would be discussing the effect of both proposals on the character and appearance of the surrounding area and the supply of employment land. In view of recent developments in relation to the emerging local plan I was also anticipating that the Council would need to provide me with up-to-date information about progress in order that I could determine the weight to be given to emerging policies.
9. I accept that it would have been helpful if the parties had been able to agree on whether or not the Council was able to demonstrate a five-year housing land supply. However, as the modifications to the emerging plan were only published for consultation on 17 March 2017, there was little time to reach agreement in relation to this matter between then and the date of the hearing. It was therefore inevitable that the progress and status of the emerging local plan would be explored in some detail at the hearing, as well as the issues set out in the Council's appeal statement.
10. The lack of agreement was frustrating for the Council as it should have been possible to set out a straight forward list of facts that were, or were not, agreed. Instead much of the SoCG reiterated the appellant's case and was effectively a response to the Council's reasons for refusal. Whilst this was not particularly helpful, I am not persuaded that this amounted to unreasonable behaviour on the part of the appellant in this case. Furthermore, there was insufficient evidence to demonstrate that the lack of an agreed SoCG significantly added to the time or expense that the Council incurred in preparing its case for these appeals.

Conclusion

11. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and an award of costs is not justified.

Sheila Holden

INSPECTOR