

Costs Decision

Hearing held on 28 February 2017

Site visit made on 28 February 2017

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 20 April 2017

Costs application in relation to Appeal Ref: APP/J3720/W/16/3158740 Land off Station Road, Fenny Compton, Warwickshire CV47 2YW

- 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 Stratford on Avon District Council for a full award of costs against Mr John Lagan of Lagan Homes Ltd.
 - The hearing was in connection with an appeal against the refusal of planning permission for an *"outline application for the construction of up to 25 dwellings (35% affordable) with all matters reserved except for access"*.
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1. The application for an award of costs is refused.

The submissions for Stratford-On-Avon District Council

2. The costs application was submitted in writing. The following additional points were made orally at the hearing.
3. The Council contend that the submission of additional case law raising matters of law on the day of the hearing, whether accepted or not and which could have been provided in advance of the hearing results in clear unreasonable behaviour and unnecessary costs in Officer time analysing the contents.

The response and submissions by Mr John Lagan of Lagan Homes Ltd

4. The response was submitted in writing. The following additional points were made orally at the hearing.
 5. The break was 11.50 until 12.20 – challenge basis of application. How many Officers and only one copy of documents for 30 minutes. The Council's original application for costs was made on the basis that we knew that the proposal was in conflict with policy. We have rebutted that in our submission and we would like to reinforce that rebuttal by reference to how much time has been taken in the hearing today in discussion about how policy should be interpreted. In addition the appeals referenced were brought in because of the Council's proposition in preparing a Statement of Common Ground – the East Staffordshire judgement. The Council accepted that East Staffordshire would be discussed at the hearing and the main appeal – Alrewas - was very recent and pertinent to that point. If the Council occurred additional costs it can only be because they did not prepare for the discussion at the hearing.
 6. Concern about the lack of proactive engagement at the application stage in accordance with paragraph 187 of the National Planning Policy Framework (the Framework) leading to a late decision on the day of adoption of the Local Plan.
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The Council have also contradicted themselves in the hearing to their statement.

The response by the Council to Mr John Lagan's Submission

7. The Council believes that the appellant's concerns are matters of administration.

Reasons

8. The Planning Practice Guidance (PPG) advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The application for costs was made in writing, in accordance with the guidance in the PPG.
9. The Council's case has been made on procedural and substantive grounds. In substantive terms the Council consider that the appeal should not have been submitted as it had no reasonable prospect of succeeding due to a clear conflict with policies in the development plan. The appellant provided evidence to support his case in writing and at the hearing. The appellant also provided evidence in relation to material considerations that he considered indicate the decision should have been made otherwise.
10. As detailed in my appeal decision, it is a matter of judgement as to whether the appeal site is within the physical confines of Fenny Compton and can be treated as small-scale. Furthermore, the appellant considered that the Compton Works site should not be considered as part of the Fenny Compton housing commitments. I acknowledge that the Council considers that there were no material considerations that indicate otherwise in relation to the conflict with the development plan. However, this is also a matter of judgement. Even though I have dismissed the appeal the appellant had a reasonable prospect of succeeding.
11. In procedural terms the Council consider that the appellant's request to submit late evidence on the day of the hearing was unreasonable as it would have been possible for him to submit it before the hearing opened. I agree that it may have been possible for the appellant to submit the documents before the hearing but the Council had time to review the documents within a scheduled break. The appellant also provided guidance on which sections of the documents he would be referring to. After discussions between the parties the appellant considered that they were not essential to his case and did not submit them.
12. I acknowledge that some additional Council Officer time was required to review the documents but the time taken was not lengthy and the proceedings were not delayed unreasonably.
13. Even though the appellant has not submitted a formal costs request he raised general concerns in relation to the Council's behaviour in his oral submission. The Council had the chance to respond to that submission. The appellant's concerns relate to the lack of dialogue with the Council and he considers that the planning application was delayed until the Stratford-on-Avon District Core Strategy 2011-2031 (CS) was adopted on the 11 July 2016. However, I have no evidence before me as to the reason why the planning application was

delayed or the amount of dialogue with the Council. Whilst I understand the sense of frustration this must have caused, it would not be reasonable to conclude that the Council had behaved unreasonably in the procedure leading up to the appeal on the basis of the information before me.

14. The appellant considers that the Council contradicted its own statement of case at the hearing. No further explanation was made in the oral submission. However, this had been raised within the general discussion at the hearing and it related to the Compton Works site and its proximity to Fenny Compton. There was a misunderstanding between the Council and the appellant as to whether the Council considered the Compton Works site as being 'associated' with the village. Nevertheless, after a number of questions I understood both parties evidence on this matter. I do not consider that the Council provided contradictory statements.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated by either of the parties.

D. Boffin

INSPECTOR