
Costs Decision

Site visit made on 3 May 2017

by Rory Cridland LLB (Hons), Solicitor

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

Decision date: 31 May 2017

Costs application in relation to Appeal Ref: APP/Y3940/W/16/3167175 Vacant Land Adjacent to Church Road, Heywood, Westbury, Wiltshire, BA13 4LP

- 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 Wiltshire Council for a full award of costs against Mr Steve Earl, SPE Developments.
 - The appeal was against the refusal of planning permission for the construction of 4 no 5 bed detached dwellings and the planting of a 3 acre woodland.
-

Decision

1. The application for an award of costs is refused.

Reasons

2. Planning Practice Guidance ("the PPG") advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. Furthermore, it advises that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. While an applicant is not required to succeed in their argument, the right of appeal should be exercised in a reasonable manner.
 3. The Council essentially relies on the lack of compliance with the development plan and the fact that it follows a previous appeal decision in respect of the same or similar development. Furthermore, it raises concerns regarding the limited amount of ecological information provided by the appellant.
 4. My decision makes clear that I consider the proposal would be in conflict with a number of development plan policies. However, the risk of an award of costs does not arise from a failure to make out one's case, but from unreasonably pursuing a claim that has no reasonable prospect of success. In seeking to establish that the scheme was in compliance with the development plan, the arguments presented were cogent and were not spurious or without merit. I do not therefore consider them to have had no reasonable prospect of success. Accordingly, I find no unreasonable behaviour in this respect.
 5. Furthermore, the recent decision referred to is now of some age and was determined under a different set of development plan policies to those which are currently extant. As such, I consider the circumstances have materially changed and find no unreasonable behaviour in this respect either.
-

6. Turning then to the lack of ecological information, it appears to me that while the appellant might reasonably have been expected to provide more up-to-date information, that is a matter for them and there is nothing that I am aware of which would require them to do so, (albeit that they run the risk of having their application refused). Accordingly, I do not consider their failure to provide such information would, in itself, constitute the type of behaviour that the costs regime is intended to discourage.
7. The Council has also asserted that the appellant has provided information that has been shown to be manifestly inaccurate or untrue and has deliberately concealed relevant evidence. While I acknowledge that these are examples of behaviours that may lead to a procedural award of costs, I am not persuaded that the appellant has acted in such manner in this instance.
8. Consequently, I find that the appellant has merely put forward his case and sought to establish compliance with the development plan. As such, I find no unreasonable behaviour and consider an award of costs in this instance would not be justified.

Conclusion

9. For the above reasons, I conclude that an award of costs is not justified.

Rory Cridland

INSPECTOR