
Costs Decision

Site visit made on 11 April 2017

by Thomas Hatfield BA (Hons) MA MRTPI

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

Decision date: 19th June 2017

Costs application in relation to Appeal Ref: APP/P0240/W/17/3166582 Land off Sand Road, Flitton, MK45 5DT

- 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 Clarke for a partial award of costs against Central Bedfordshire Council.
 - The appeal was against the refusal of planning permission for the erection of 18 new dwellings.
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Decision

1. The application for an award of costs is allowed in part.

Reasons

2. 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.
 3. The appellant submits that the Council has acted unreasonably in that 2 of its reasons for refusal were capable of being dealt with by condition. Furthermore, the Council submitted late evidence, which necessitated a further written response from the appellant.
 4. The Council's third reason for refusal stated that insufficient information had been submitted in relation to surface water drainage and flood risk. However, the application is in outline, with layout and landscaping to be determined at a later stage. The Council do not contend that surface water drainage or flood risk mitigation would be difficult or incapable of being accommodated in this case. Accordingly, there is no reason why this matter could not have been dealt with by condition.
 5. The Council's second reason for refusal related to the absence of a completed legal agreement securing the provision of affordable housing. The appellant states that this matter could also have been dealt with by condition. However, as set out in my Decision, the use of such a planning condition would not be appropriate in this case. The Council therefore did not act unreasonably in this regard.
 6. In addition, the Council submitted late evidence in relation to its housing land supply position. This late evidence necessitated a written response from the appellant. However, this evidence is base-dated to 1st April 2017 and was submitted to the Inspectorate on 20th April 2017. Accordingly, it would not
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have been possible for the Council to have provided this evidence in their full statement of case. It is also clearly of relevance to my Decision. Whilst the Council could have stated that this matter was under review, the outcome of that review would not have been known at an earlier stage. Accordingly, it would not have avoided the need for a further written response from the appellant. In my view, the Council did not act unreasonably in this regard.

7. PPG lists examples of the behaviour that may give rise to a substantive award of costs against a local planning authority. This includes refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead. For the reasons set out above, the Council acted unreasonably in applying the third reason for refusal relating to surface water drainage and flood risk. In these circumstances, extra costs were incurred, and a partial award of costs in these specific respects is justified.

Conclusion

8. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that a partial 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 other enabling powers in that behalf, IT IS HEREBY ORDERED that Central Bedfordshire Council shall pay to Mr Clarke, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in arguing against the Council's third reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Central Bedfordshire 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.

Thomas Hatfield

INSPECTOR