



Costs Decision

Site visit made on 9 October 2017

by Graham Wyatt BA (Hons) MRTPI

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

Decision date: 29th November 2017

Costs application in relation to Appeal Ref: APP/Y0435/W/17/3178790 Land to the Rear of Castle Road and North of The Glebe, Lavendon, Olney MK46 4JE

- 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 & Mrs Gray for a full award of costs against Milton Keynes Council.
 - The appeal was against the refusal of planning permission for 21 new dwellings and associated development on land rear of Castle Road, Lavendon.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) is clear that costs may only be awarded against a party who has acted unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG further sets out that parties in planning appeals and other planning proceedings normally meet their own expenses. Additionally, the PPG is clear that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. The planning application was refused contrary to the advice of professional officers. This in itself is not unreasonable behaviour. The committee was not bound to accept the officer recommendation provided it could show reasonable planning grounds for taking a contrary decision. Whilst the appellant may not like the approach taken by the committee in reaching its decision, it is for me to consider whether the decision was reasonable and soundly based.
4. The appellant's claim is that the Council acted unreasonably by refusing planning permission for their development yet approved an application for a similar development in the same village some weeks later. The appellant argues that both applications were the subject of the same local plan policy which Members of the Development Control Committee did not apply consistently by refusing one application and granting the other. The appellant has provided a copy of the officer's committee report for both applications and highlighted the similarities.
5. The PPG details what type of behaviour may give rise to a substantive award of costs against a local planning authority and gives, "not determining similar

- cases in a consistent manner¹” as an example. It is clear from the officer’s committee report that there are a number of similarities to the application that was granted permission and the application that is the subject of this appeal. The officer’s report also considers the same local plan policy and gives the same advice to Members regarding its efficacy.
6. The Council did not substantiate its reason for refusal by failing to provide a written statement in a timely manner as part of the appeal. Moreover, the Council was made aware of the appellant’s application for costs and did not respond. Consequently, I only have the minutes of the committee which records that some Members saw the site as an infill site, rather than the open countryside. However, both applications related to a housing development on previously developed land outside of the settlement boundary of the same village and are similar in that respect.
 7. In determining the approved application it is clear that Members of the committee were aware of the prevailing policy and the minutes record that some expressed a concern about granting planning permission contrary to adopted policy. However, the final decision of the committee was to approve an application which was counter to a decision it made some weeks earlier for a very similar case. This strongly indicates inconsistency.
 8. Therefore, I have shown that the Council have failed to determine a similar case in a consistent manner causing the appellant to incur unnecessary expense in the appeal process. An award of costs on this particular matter is allowed.
 9. However, I am not persuaded that an award of costs for the preparation of a planning obligation is justified as the appellant would still have had to enter into such an obligation had the council granted planning permission.

Costs Order

10. 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 Milton Keynes Council shall pay to Mr & Mrs Gray, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the reason for refusal: such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Milton Keynes 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.

Graham Wyatt

INSPECTOR

¹ PPG Paragraph: 049 Reference ID: 16-049-20140306 Revision date 06 03 2014