
Costs Decision

Inquiry Held on 5, 6 & 7 December 2017

Site visit made on 5 December 2017

by C J Anstey BA (Hons) DipTP DipLA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2018

Costs application in relation to Appeal Ref: APP/W1525/W/17/3179245 Hayes Country Park, Hayes Chase, Rettendon, Chelmsford, SS1 7QT.

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Chelmsford City Council for a partial/full award of costs against Mr James Crickmore.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the use of land as an extension to the approved residential caravan park
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Decision

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

The submissions for Chelmsford City Council

2. Both procedural and substantive awards are justified. The appellant has engaged in unreasonable behaviour which has led the Council to incur unnecessary or wasted costs. In particular:
 - (i) Raising new points for the first time in proofs of evidence. The fall-back position, the commitment to sterilise particular areas, and commitments to support existing on-site facilities were not raised in the statement of case. The Council had to spend additional time preparing rebuttal evidence to address these new points. A partial award of costs is justified on this basis.
 - (ii) Delay in providing Unilateral Undertaking. The draft UU was submitted late and was not received by the Council until after the deadline for rebuttal proofs. The draft UU differed in certain material respects from what was outlined in the proofs of evidence. As a result further preparatory work to assess the draft UU was required on the part of the Council. A partial award of costs is justified on this basis.
 - (iii) Appellant's decision to challenge the Council's 5YHLS position. The amount of time and money that the Council has had to spend in responding to the appellant's case on 5YHLS is out of all proportion to the relevance of the issue in an appeal of this nature. The appellant's decision to raise it as an issue was unreasonable and a partial award of costs is justified.
 - (iv) Lack of clarity as to the scope of the 5YHLS challenge. The appellant failed to provide full details of its case on the 5YHLS issue in the

statement of case. In order to protect its position the Council has had to undertake a substantial amount of work. In the end the appellant did not directly challenge the Council's assessment. It was unreasonable for the appellant to fail to make its position clear at an earlier stage and this has led to wasted expenditure. A partial award of costs is justified on this basis.

- (v) Development clearly contrary to policy, no adequate basis for allowing it. The various factors relied upon by the appellant are nowhere near sufficient to amount to VSC and most of the claimed benefits will on the appellant's own case be delivered through the claimed fall-back position. As such it was unreasonable for the appellant to pursue the appeal. A full award of costs is justified on this basis.

The response by Mr James Crickmore

- 3. The conduct complained of by the Council in this case does not come close to being unreasonable behaviour either procedurally or substantively.

- (i) Raising new points for the first time in proofs of evidence. No new points are raised. The Council did not read the statement of case properly. It did not have to hunt through the statement for clues. The fall-back position is dealt with in paragraph 7.8 of the appellant's statement of case
- (ii) Delay in providing Unilateral Undertaking. The Council was aware that a draft UU was being prepared. The detail in the proof was perfectly sufficient to allow the Council to know what was coming. No further work has been undertaken on behalf of the Council.
- (iii) Appellant's decision to challenge the Council's 5YHLS position and
- (iv) Lack of clarity as to the scope of the 5YHLS challenge. Housing land supply is referred to in the appellant's statement of case and dealt with in appellant's proofs of evidence.
- (v) Development clearly contrary to policy, no adequate basis for allowing it. Whether or not very special circumstance exist is a classic example of planning judgement.

Reasons

- 4. The *Planning Practice Guidance* 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.

- (i) Raising new points for the first time in proofs of evidence. I consider that it is far from clear from the appellant's statement of case that the fall-back position, the commitment to sterilise particular areas, and commitments to support existing on-site facilities, were to be advanced as 'other considerations.' Consequently there has been the introduction of fresh and substantial evidence at a late stage, necessitating extra work for the Council in addressing these arguments in the form of a rebuttal proof. Thus a partial award of costs is justified on this basis.

- (ii) Delay in providing Unilateral Undertaking. The unilateral undertaking and the benefits flowing therefrom are a fundamental component of the appellant's case. However the UU was not submitted until after the deadline for the submission of the rebuttals and only a few days before the opening of the Inquiry. This delay in providing information constitutes unreasonable behaviour and necessitated extra work for the Council in preparing a response to the UU. Thus a partial award of costs is justified on this basis.
- (iii) Appellant's decision to challenge the Council's 5YHLS position, and
- (iv) Lack of clarity as to the scope of the 5YHLS challenge

The appellant's statement of case and proofs of evidence clearly indicated that the Council's 5YHLS was to be questioned during the appeal proceedings. In the light of this I believe that the Council was obliged to produce detailed evidence to counter the appellant's claims. Consequently the appellant has not acted unreasonably in this regard and there are no grounds for an award of costs on this basis.
- (v) Development clearly contrary to policy, no adequate basis for allowing it. I consider that taken as a whole there was a reasonable basis for the case put for the appellant. Whether the other considerations clearly outweigh the Green Belt harm and amount to the very special circumstances required to justify the proposal is a matter of planning judgement. Consequently the appellant has not acted unreasonably in this regard and there are no grounds for a substantive award of costs on this basis.

Costs Order

5. 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 Mr James Crickmore shall pay to Chelmsford City Council the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the extra work detailed in paragraphs 4 (i) and 4(ii) above; such costs to be assessed in the Senior Courts Costs Office if not agreed.
6. The applicant is now invited to submit to Mr James Crickmore to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Christopher Anstey

Inspector