
Costs Decision

Site visit made on 26 March 2019

by JP Tudor Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 04 June 2019

Costs application in relation to Appeal Ref: APP/P1615/W/18/3218103 Land off Top Road, Upper Soudley, Cinderford, Gloucestershire GL14 2TY

- 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 James Bevan for a full award of costs against Forest of Dean District Council.
 - The appeal was against the refusal of outline planning permission for 20 dwelling units with up to 50% affordable homes. (All matters other than access and scale are reserved).
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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.¹
3. There is no separate costs application document. Instead, the application is signalled by a single sentence within the Grounds of Appeal Statement. It says: *'The failure by the LPA to consider these points in a balanced considered way is submitted to be unreasonable and Costs are claimed for Appealing.'* As that sentence is at the end of section 4 of the statement, it is reasonable to suppose that it is referring to the preceding points within that section.
4. On that basis, the main allegation appears to be that Council Officers did not consider the application in a 'full and balanced way' or 'apply a proper planning balance' when making recommendations to the Council's Planning Committee, to enable it to make a properly informed and balanced decision. The PPG advises that although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.²
5. However, the Council Officer's Report (the report), which formed the recommendation to refuse the application, extends to some 22 pages and features a section titled 'Planning Balance and Conclusion'.³ That section lists

¹ Paragraph: 030 Reference ID: 16-030-20140306

² Paragraph: 033 Reference ID: 16-033-20140306

³ Section 8

- the 'positive' and 'negative' aspects of the proposal, which are also discussed within the body of the report. The provision of 10 affordable homes is included amongst the positive elements and is discussed in other parts of the report.
6. Similarly, locational sustainability is discussed within a dedicated section of the report. There is reference to the services and facilities within the village, including the primary school, and discussion of bus services within that section, albeit the Council takes a different view on that aspect from the applicant.
 7. Although the applicant refers to the absence of specific reference to various court judgements and appeal decisions within the report, it is not necessary for such a report to detail every document submitted as part of the application. Whilst the Braintree court judgements⁴ are not specifically mentioned, there is recognition that the site is not 'isolated' in the physical sense, which was the principal focus of those cases.
 8. Furthermore, the minutes of the Planning Committee meeting and associated documentation⁵ indicate that relevant issues, such as the 5-year housing land supply and the Secretary of State's appeal decision relating to Land North of Lower Lane, Berry Hill⁶, were considered. Moreover, a representative of the applicant spoke to written representations, already submitted to the committee. A Senior Planning Officer from the Council was present to provide information and answer questions from Members.
 9. The applicant also refers to alleged inaccuracies in the Council's reasons for refusal. However, the submissions made by the applicant largely relate to the merits of the case and the Council's assessment of it. Ultimately, it is the responsibility of the Council to exercise its planning judgement in relation to those issues. The decision notice sufficiently explains the Council's reasons for refusing the application, with reference to relevant local and national policy.
 10. It is submitted by the applicant that the Council's fourth reason for refusal, relating to the lack of a completed s.106 Agreement to secure the affordable housing element, could have been dealt with by means of a planning condition. However, the PPG advises that such negatively worded conditions are unlikely to be appropriate in the majority of cases.⁷
 11. Given the above, I see nothing untoward or unreasonable in the behaviour of the Council when dealing with the planning application, either procedurally or substantively.⁸

Conclusion

12. I therefore find, for the reasons set out above, that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Accordingly, no award of costs is made.

JP Tudor

INSPECTOR

⁴ Braintree District Council v SSCLG & Ors [2017] EWHC 2743 (Admin) & [2018] EWCA Civ 610

⁵ Tuesday, 12 June 2018

⁶ APP/P1615/W/15/3005408

⁷ Paragraph: 010 Reference ID: 21a-010-20140306

⁸ Paragraph: 031 Reference ID: 16-031-20140306