The Planning Inspectorate

Costs Decision

Site visit made on 20 May 2019

by Mrs H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2019

Costs application in relation to Appeal Ref: APP/L5810/W/19/3222984
Land near Sunnyside Reservoir, Lower Hampton Road, Sunbury on Thames TW16 5PR

- 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 David Taylor for a full award of costs against the Council of the London Borough of Richmond-upon-Thames.
- The appeal was against the refusal of planning permission for replacement of three derelict storage buildings and associated hardstanding with one four bedroom detached house.

Decision

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

Reasons

2. 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.

3. The Guidance further sets out that parties in planning appeals and other planning proceedings normally meet their own expenses. Additionally, the Guidance is clear that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.

4. The applicant claims that the Council has been highly unreasonable by failing to provide repeatedly requested pre-application advice, essential proof that the subject site has been formally designated as Green Belt through proper process and failing to respond to a request made under the Freedom of Information (FOI) regulations.

5. Advice given before an application is made is given without prejudice and cannot pre-determine the outcome of a subsequent application, which must take account of all material factors. In this regard, whilst the Council's written pre-application advice may not have been forthcoming, it does not follow that the costs incurred as part of the appeal are a direct consequence of the absence of such advice. Similarly, the absence of a response to the FOI request does not indicate that the appeal application was determined other than on the basis of its own merits.

6. In this case, the disagreement between the parties relates to the designation of the appeal site as Green Belt by the relevant policies and accompanying maps

forming part of the adopted Development Plan and now superseded former Development Plans. The process of formulating policy is governed by separate processes and legislation. Any allegedly unlawful decision of the Council pursuant to these processes can be challenged at the appropriate juncture.

7. Whilst it has been suggested that a mistake may have been made historically and some inconsistencies with different graphics within the various Development Plan documents have persisted since then, the Council adopted the current Local Plan[1] in July 2018. I have not been made aware of any legal challenges to the adoption of the Local Plan insofar as is relevant to the appeal site's inclusion within the Green Belt. Whilst the applicant may consider that the Council's designation of the site as Green Belt is 'unlawful', it is beyond the scope of an individual application or appeal to conclude on this matter.

8. Whilst costs have been incurred through the employment of the architect to prepare the appeal, and for solicitors and barristers to provide assistance as part of this process, the Council made its decision on the appeal application on the basis of the current Development Plan and has not been unreasonable in doing so. Whilst I appreciate that the outcome of the appeal application will have been a disappointment to the applicant, following consideration of the appeal in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, I have concurred with the Council.

9. In conclusion, I find that the Council has not behaved unreasonably in determining the appeal application and the applicant's costs in mounting the appeal were not unnecessarily incurred. For this reason, and having regard to all other matters raised, an award of costs is therefore not justified.

Hollie Nicholls

INSPECTOR

[1] London Borough of the Richmond Upon Thames Local Plan – adopted July 2018