
Costs Decision

Inquiry Held on 4 - 7 June and 11 June 2019

Site visit made on 11 June 2019

by Kenneth Stone BSC Hons DipTP MRTPI

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

Decision date: 11 July 2019

Costs application in relation to Appeal Ref: APP/Z1510/W/18/3214136 Land off Mount Hill, Halstead, Essex.

- 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 Tesni Properties Ltd and Messrs S. H. Cooke, J. S. Cooke and A. N. Cooke for a partial award of costs against Essex County Council.
 - The inquiry was in connection with an appeal against the failure of the Braintree District Council to issue a notice of their decision within the prescribed period on an application for outline planning permission for the erection of 71 dwellings with associated garages, garden curtilages, a Sustainable Urban Drainage system (SUDs), public open space, hard and soft landscaping.
-

Decision

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

The submissions for Tesni Properties Ltd and Messrs S. H. Cooke, J. S. Cooke and A. N. Cooke.

2. The appellant made an application for a partial award of costs in respect of Essex County Council's request for a financial contribution towards education provision resultant from the additional pressure on such infrastructure arising from the development.
3. The appellants' claim was made in the first instance in writing and the detail is a matter of record the gist of the case being that the need for a financial contribution was unnecessary and therefore the request was unreasonable. The appellant contends that the generated need for primary school places could be accommodated at the existing 4 primary schools in the primary school planning area. It is the appellants' position that the County Council must have known the position and had they applied their own criteria against their own evidence it was apparent that there was no basis for their case.
4. At the Inquiry the appellant responded to the County Council's written response with additional oral comments. The appellant contended that the County Council had not engaged with the evidence. They were given ample opportunity by the Local Planning Authority to reconsider its position. Mr Nicholson has used the County Council's own evidence and its own data, the County Council should have known that the evidence, with a proper application of its own policies, did not demonstrate a need for additional school places and

there was adequate spare capacity such that there was no requirement for a legitimate request for a financial contribution.

The response by Essex County Council (ECC)

5. The County Council provided a written response to the appellants' written claim but did not appear at the Inquiry. The detail of its response is therefore again a matter of record and I do not set it out in detail here. The gist of its response contends that the physical capacity of schools identified takes no account of schools having to organise into suitable age groups / class sizes and that detailed consideration of pupils living in the area, other planning permission contributions and time horizons all lead into the appropriate balance of the decision, including the consideration of bulge classes. ECC only had the information provided with the application on which to base its comments. The appellant and their education expert did not engage with ECC during the consideration of the planning application and no pre-application advice was sought from ECC. Having reviewed all the evidence, including Mr Nicholson's Rebuttal Statement and Education Position Statement, the County Council concluded that it had become clear at that time that the balance of the evidence in front of the Inspector lay in favour of the appellant and that time should not be taken up at the hearings with this matter.

Reasons

6. 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.
7. Statutory consultees play an important role in the planning system: local authorities often give significant weight to the technical advice of the key statutory consultees. In this case the local planning authority confirmed that it has no expertise in terms of school places and relies on the advice from the County Council. The County Council was engaged in the appeal process and provided two proofs of evidence addressed towards this particular matter to support its advice. In doing so this makes the statutory consultee a party to the appeal.
8. Whilst it maybe the case that the applicant and County Council did not engage in meaningful discussions during the processing of the application the opportunity arose for constructive engagement during the appeal not least with the requirement for dialogue around a statement of common ground to be provided in advance of the production of proofs of evidence.
9. The basis of the calculations and considerations around whether or not there is surplus capacity for school places is based on evidence and matters that are in the public domain and to which the County Council would have access to as education authority. The information in terms of school rolls, the monies coming forward through other section 106 agreements and planning obligations and the assessment of the capacity of individual schools or school groupings, however they are accumulated, are matters that would have been known to the County Council. The exchange of proofs of evidence, including a rebuttal proof, and the dialogue on seeking to agree an education statement of common ground all gave the opportunity to review the position and information on which the parties were relying. To conclude the day before the opening of the Inquiry that the balance of the evidence was such that it lay in favour of the

appellant at such a time in the proceedings is unreasonable. There is no substantive additional or new evidence that would have led to such a change in position. Rather a proper and systemic understanding of the evidence which was available led to that inevitable conclusion. There were a number of opportunities along the way where such a conclusion could reasonably have been reached. Overall the continued prosecution of its case and sticking to its position until the late withdrawal of evidence, at the last minute, is unreasonable behaviour.

10. The appellant has had to employ the services of an expert witness to address education provision matters. This has resulted in the provision of a proof of evidence, consideration of the County Council's case and the provision of a further rebuttal proof. Given the County Council's withdrawal of its evidence and request for a financial contribution this resulted in unnecessary and wasted expense. I also understand that given the late timing of the County Council's position the appellants' expert witness attended the first day of the Inquiry to hear and understand the Local Planning Authority's opening to ensure there were no further matters that were required to be addressed. Again, this resulted in the appellant incurring wasted and unnecessary expense.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

12. 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 Essex County Council shall pay to Tesni Properties Ltd and Messrs S. H. Cooke, J. S. Cooke and A. N. Cooke, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of matters related to the provision of an education contribution as discussed above; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Essex County 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.

Kenneth Stone

INSPECTOR