



Costs Decision

Site visit made on 17 April 2019

by M Seaton DipTP MRTPI

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

Decision date: 23 July 2019

Costs application in relation to Appeal Ref: APP/B5480/W/19/3220714 15 Mildmay Road, Romford, RM7 7DA

- 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 Ronnie Hollington for a full award of costs against the Council of the London Borough of Havering.
 - The appeal was against the refusal of planning permission for the change of use and conversion from shop unit to one flat dwelling.
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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 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. Whilst the Guidance sets out a series of examples of behaviour whereby either a procedural or substantive award of costs may be justified, neither list is stated to be exhaustive. The application for costs is timely.
3. The applicant contends that the Council has acted unreasonably by failing to take into account the 'tilted balance' created by its inability to be able to demonstrate a 5-year supply of deliverable housing land, and therefore to address the requirements of paragraph 11 of the National Planning Policy Framework (the Framework). Furthermore, it is highlighted that the Council failed to co-operate with the applicant during the course of the planning application, and refused planning permission on grounds which could have been adequately addressed by the imposition of appropriate conditions.
4. I have carefully considered the applicant's contention related to the situation arising regarding the 'tilted balance' and paragraph 11 of the Framework. As I concluded in the planning appeal decision, the Council has not disputed the applicant's submissions that paragraph 11 is engaged with a reported 3.95-year housing land supply only, albeit has remained silent on the matter during the course of the planning application and appeal.
5. However, and with an unchallenged acceptance of the absence of a 5-year supply of deliverable housing land, it is also clear from the Council's evidence that its decision-making in respect of the proposed development does not include any assessment of the impact of the engagement of paragraph 11 of the Framework. In this regard I am particularly mindful of paragraph 11(d)(ii) which advises granting permission unless *any adverse impacts of doing so*

would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, which indicates the clear need for a balancing exercise in the context of the paragraph to be undertaken.

6. I have had regard to the Council's submission in the response to the Costs Application *that all planning applications are looked at favourably unless there are clear grounds to refuse planning permission*. Whilst this is not disputed on the basis of the content of the Officer Delegated Report, this is not the contention which the applicant has advanced. Whilst ultimately I acknowledge that I have found against the applicant in the planning appeal decision even allowing for the application of paragraph 11 and the 'tilted balance', that is not to say that had the Council applied the assessment against paragraph 11 that it would have reached the same conclusions. It is entirely plausible to consider that given the evidence before the Council, as the decision-maker, and also regarding the appropriate use of conditions as a means of resolving certain other issues, that the application of the 'tilted balance' could have negated the need for the appeal.
7. The failure of the Council to seemingly understand the need to consider the proposed development within the parameters of paragraph 11 of the Framework is a fundamental omission in the assessment, and one which on the face of it represents a critical error in the Council's decision-making in this instance. I find the Council's apparent failure to address the correspondence submitted by the applicant by e-mail on 15 November 2018 in advance of the determination of the planning application, which clearly drew the Council's attention to matters related to paragraph 11 of the Framework, further exacerbates the unreasonableness of the Council's position.
8. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that this would warrant a full award of costs.

Costs Order

9. 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 the Council of the London Borough of Havering shall pay to Mr Ronnie Hollington the full costs of the appeal proceedings, such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to the Council of the London Borough of Havering, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Seaton

INSPECTOR