

Costs Decision

Hearing held 11 September 2019

Site visit made on 11 September 2019

by L Fleming BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 September 2019

Costs application in relation to Appeal Ref: APP/W0340/W/19/3223949 Land adjacent to Victoria Park, A4 Bath Road, Woolhampton RG7 5RT

- 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 West Berkshire Council for a partial award of costs against Ms Annie Brazil.
 - The hearing was in connection with an appeal against the refusal of outline planning permission for residential development of 2 No detached 4 bed dwellings and 3 No 3 bed terraced cottages.
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Decision

1. The application for costs is refused.

The submissions for West Berkshire Council

2. The application by the Council was made verbally and supported in writing at the hearing. In summary it is submitted that the appellant has behaved unreasonably and caused the Council to incur unnecessary and wasted expense by preparing appeal documentation, commissioning consultants and attendance at the hearing with particular regard to housing land supply.
3. The main substance of the Council's claim is that the appellant has not appropriately engaged with the Council's own evidence on housing land supply and had they done so the housing land supply position would not have been in dispute. It is alleged, therefore that time spent on housing land supply during the appeal and at the hearing or even the hearing would not have been necessary had the appellant appropriately engaged. Furthermore, it alleged that if this matter was not disputed the appeal could have been dealt with by written representations.

The response on behalf of the appellant

4. The appellant's representative was given time to consider a response to the claim. He orally indicated that the appellant has consistently responded to correspondence and engaged with the Council on the subject matter since the appeal was lodged, up until and at the hearing. It is alleged the appellant's position on the matter is clearly articulated in the evidence and has been clearly articulated at the hearing. It is suggested the appellant was justified in requesting a hearing.
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Reasons

5. The Planning Practice Guidance (PPG) 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.
6. I have considered the correspondence between the Council and the appellant. I note, the Council emailed the appellant on 15 July 2019 setting out why it considered its own position on the housing land supply was robust also suggesting that the appellant's evidence was based on analysis as at 31 March 2017 which the Council advised was out of date.
7. In response, on 25 July 2019 the appellant responded without commenting on detailed matters simply stating they still intend to challenge the matter at appeal. Furthermore, the appellant provided on 27 August 2019 further evidence on housing land supply based on the Council's evidence dated December 2018. I have also considered the Council's comments with regard to whether the appellant appropriately engaged in a discussion on the five year supply which I requested take place during a dedicated hearing adjournment.
8. However, I do not know what discussions took place during the adjournment. When asked questions at the hearing on matters relevant to the housing land supply the appellant provided responses which were clear and reasonable. Furthermore, both parties had an opportunity to agree detailed common ground on this matter in advance of the hearing and neither party took this opportunity with the statement of common ground simply stating the matter was in dispute.
9. In my view, it was reasonable for the appellant to not accept what the Council say on five year land supply and seek to challenge it at the hearing. There was no substantive evidence put to me by either party to suggest the answer to whether the Council can demonstrate a deliverable five year housing land supply or not was an obvious one, particularly when considering the evidence supporting individual sites making up the supply.
10. Furthermore, in this case there are numerous other main issues which have benefitted from questioning at the hearing and the appeal has not turned on whether the Council can demonstrate a five year land supply or not.
11. Consequently, I find the appeal and the hearing were inevitable. I find the appellant has acted reasonably in requesting a hearing, preparing the necessary evidence and participation in the appeal. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not therefore been demonstrated and an award of costs is not therefore justified.

L Fleming

INSPECTOR