
Costs Decisions

Site visit made on 20 August 2019

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 3 October 2019

**Costs application in relation to Appeal Ref: APP/J1915/W/18/3195491
Great Hadham Golf & Country Club, Great Hadham Road,
Much Hadham SG10 6JE**

- 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 Great Hadham Country Club Limited for a full award of costs against East Hertfordshire District Council.
 - The appeal was against the refusal of planning permission for change of use from golf course to golf course with leisure lodges.
 - This Costs Decision supersedes that issued on 2 October 2018. The Appeal Decision on the appeal was quashed by order of the High Court.
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**Costs application in relation to Appeal Ref: APP/J1915/W/18/3203036
Great Hadham Golf & Country Club, Great Hadham Road,
Much Hadham SG10 6JE**

- 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 Great Hadham Country Club Limited for a full award of costs against East Hertfordshire District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for change of use from golf course to golf course with leisure lodges.
 - This Costs Decision supersedes that issued on 2 October 2018. The Appeal Decision on the appeal was quashed by order of the High Court.
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Decisions Appeal A and Appeal B

1. I allow both applications for an award of costs in the terms set out below.

Reasons

2. The Planning Practice Guidance advises that parties in planning appeals and other planning proceedings normally meet their own expenses, but that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. (Paragraph: 027 Reference ID: 16-027-20140306)
3. The appellant considers that the Council behaved unreasonably in refusing permission for the first application and failing to determine the second one, and that the proposal is supported by relevant Development Plan policies and by the National Planning Policy Framework. The appellant further considers that the Council behaved unreasonably in not accepting the information on surface

water drainage submitted at the application stage, and this resulted in the need to produce a flood risk report which should not have been necessary. A full award of costs is sought in both appeals.

4. In what is now Appeal A, the Council refused the first application for 5 reasons, 4 of which appear to have been predicated on the application being for residential development that would be a person's sole residence. That came from a misunderstanding or mis-reading of the supporting text of the Housing Policies on how mobile homes may be dealt with. The application was clear that the lodges were for leisure purposes. It should have been clear that the Housing Policies were not applicable, and that the locational policies in the then Local Plan for rural areas beyond the Green Belt, now District Plan Policy GBR2, provides for leisure uses in rural areas, as does national policy.
5. Those 4 reasons were wrongly based and the Council failed to substantiate them at appeal, making vague, generalised or inaccurate assertions about a proposal's impact, which were unsupported by any objective analysis. The leisure use applied for could have been secured by condition and the non-policy compliant residential use, if that was a legitimate concern, could have been prevented. The Council therefore refused planning permission on a planning ground capable of being dealt with by conditions. (Paragraph 049 Reference ID: 16-049-20140306 bullet points 2, 3 and 4).
6. The third Reason for Refusal concerned the lack of a flood risk assessment and this requirement is reasonable. The appellant's view that being at the top of a hill obviates that need is over-simplistic, as replacing open ground with the lodge roofs could have an adverse run-off effect downhill. In the event the appellant did commission and submit an acceptable flood risk assessment, dated February 2018, whereas the Refusal Notice for Appeal A was dated 1 February 2018.
7. An appeal against that refusal was an option open to the appellant and that option was taken, by Appeal Form dated 8 February 2018. On 13 February 2018 the appellant also took the other option open to them of making a fresh application for an identical development proposal, but this time with the benefit of the flood risk assessment.
8. Appeal B concerns a failure to determine this second application. Although the appellant objects, a Council that has failed to determine an application is fully entitled under the appeal procedure rules to submit putative reasons for refusal, as if they had determined the application. This allows an appellant and the appointed Inspector to know for certain what the concerns are and to be able to progress the appeal. Failure to determine does not debar a Council from taking full part in the appeal process to defend those putative reasons for refusal.
9. Those putative reasons for refusal maintained the objections over the Housing Policies based on the mis-understanding or mis-reading previously referred to, but without the objection on flood-risk grounds.
10. As a result, Appeal B displays the same failings on the part of the Council as in Appeal A, and because there was no other, reasonable, objection, since the flooding issue had been overcome, the Council in addition prevented and delayed development which should clearly be permitted, having regard to its

accordance with the Development Plan, national policy and any other material considerations (Paragraph 049 Reference ID:16-049-20140306 bullet point 1).

11. There was therefore unreasonable behaviour on the part of the Council in both appeals, and this has resulted in unnecessary expense to the appellant. Strictly and as reflected in the Costs Order below, Appeal A is a partial award of costs since there was a reasonable reason for refusal, while Appeal B is a full award as the appeal should not have been necessary. In the event both appeals ran together and were for identical development proposals and with identical planning issues, since the Council did not contend the flood-risk issue in Appeal A. Nevertheless, quantum is not a matter for these Costs Decisions.
12. 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 in Appeal A and a full award of costs is justified in Appeal B.

Costs Orders Appeal A and Appeal B

13. 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 East Hertfordshire District Council shall pay to Great Hadham Country Club Limited, the costs of the appeal proceedings, limited in Appeal A to those costs incurred in respect of reasons for refusal 1, 2, 4 and 5, but not so limited in Appeal B; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to East Hertfordshire District 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.

S J Papworth

INSPECTOR