
Costs Decision

Site visit made on 9 September 2019

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2019

Costs application in relation to Appeal Ref: APP/P0240/W/19/3223970 Land off Clophill Road, Maulden MK45 2AQ

- 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 Aldbury Homes for a full award of costs against Central Bedfordshire Council.
 - The appeal was against the refusal of planning permission for the development of up to 14 dwellings including access.
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Decision

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

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant considers that the Council has behaved unreasonably by failing to take into account an appeal decision¹ at the site (the previous appeal decision) when refusing to grant planning permission for the scheme now under consideration. It is my understanding that the previous appeal decision related to an identical scheme.
4. The previous appeal decision identifies that the development, notwithstanding the site's location outside of any defined settlement envelope, would not give rise to any significant harm to the character and appearance of the area. Indeed, it was found that the adverse impacts of the development were limited exclusively to the non-delivery of much needed affordable housing. This was a factor that weighed heavily in the previous appeal decision.
5. In the case of this re-submitted proposal, I understand that a draft legal agreement to secure affordable housing was before the Council when it made its decision to refuse to grant planning permission. Indeed, the grounds for refusing permission relate to alleged harm to the character and appearance of the area including when taking account of the site's relationship to neighbouring settlements and the wider setting of Maulden Church.

¹ APP/P0240/W/18/3194555

6. As set out in the Planning Practice Guidance, local planning authorities are at risk of an award of costs if they persist in objecting to a scheme or elements of a scheme which an Inspector has previously indicated to be acceptable.
7. A recent appeal decision² relating to a site situated on the opposite side of Clophill Road to the appeal site has been referred to. However, as can be noted from my findings upon the planning appeal to which this application relates, the impact of this other scheme upon landscape character would not be directly comparable to that of the appeal proposal. It is thus an appeal decision of limited relevance that does not, in respect to the appeal under consideration here, justify the Council considering landscape impact afresh.
8. The previous appeal decision on the appeal site was made in the context of the tilted balance, as set out under paragraph 11 of the National Planning Policy Framework (February 2019). It is the Council's position that this was wrongly applied. However, even if this were the case, it would not have changed the outcome of the previous appeal and would not have altered the adverse impacts that were identified by the Inspector, namely the lack of delivery of affordable homes.
9. I have not been made aware of any significant changes in site circumstances or planning policy since the previous appeal decision was made that could potentially justify the Council's choice to persist in objecting to the scheme on character and appearance grounds.
10. I therefore conclude that, for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has been demonstrated. Having had regard to all other matters raised, an award of costs is therefore justified.

Costs Order

11. 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 Central Bedfordshire Council shall pay to Albury Homes the costs of the appeal proceedings described in the heading of this decision.
12. The applicant is now invited to submit to Central Bedfordshire 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Andrew Smith

INSPECTOR

² APP/P0240/W/18/3218992