



Costs Decision

Site visit made on 2 December 2019

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th December 2019

Costs application in relation to Appeal Ref: APP/C1570/W/19/3228069 Land at Pound Hill, Little Dunmow

- 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 Uttlesford District Council for a partial award of costs against Enodis Group Limited.
 - The appeal was against the refusal of planning permission for 18 dwellings (use class C3), vehicular accesses, public open space, sustainable drainage systems and all other associated hard/soft landscaping and infrastructure.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (PPG) states that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The Council are alleging that the appellant failed to keep to the appeal timetable, and this justifies a procedural award of costs. Failing to keep to the appeal timetable is a type of behaviour listed in the PPG that may result in an award of costs against an appellant.
3. The Council suggest that the appeal was lodged without the appellant making its statement of case available to the Council. An email requesting sight of this document was sent by them on the 25 October 2019 but went unanswered. This apparently resulted in the Council only receiving a copy of the statement on the 5 November 2019, some three days before its statement was due. The evidence submitted with the application for an award of costs does not enable me to verify this account. Nevertheless, even if I were to accept the Council's proposition it is unclear what unnecessary or wasted expense has been incurred because of the delay.
4. The Council have also alleged that the appellant has failed to contact the Council to request the drafting of a s106 Legal Agreement or submit a unilateral undertaking. This is despite the appellant's stated intention in their statement of case to do so. If this was the case it would be unsurprising as the absence of a planning obligation was not a reason for refusal. This has resulted in some ambiguity over the Council's position on this matter.
5. Notwithstanding this, a completed legal agreement to which the Council is party has been submitted. This demonstrates that the Council and appellant

have worked together to produce this document in a timely fashion. Again, the Council has not explained what unreasonable costs it has been put to. The legal agreement includes provision for the Council's costs incurred in the drafting of the s106 Legal Agreement to be met.

6. There has been some confusion regarding whether the appellant sought to alter the number of homes proposed down from eighteen to sixteen. The amendment was never formally sought as part of the appeal, it apparently relates to a subsequent pre application discussion. Moreover, the Council explained in an email to the Planning Inspectorate on the 7 November 2019 that it intended to produce a statement based on the information originally considered by the Council. Accordingly, the Council has not been put to unreasonable expense in having to consider a late amendment.
7. The appellant did not withdraw their appeal when requested to by the Council following its engagement on a revised scheme, but this is entirely unsurprising in advance of a positive determination by the Council. The appellant cannot be criticised for seeking to exercise their right of appeal as well as their right to submit a revised planning application.
8. In conclusion, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and therefore an award of costs would be unjustified.

Graham Chamberlain,
INSPECTOR