
Costs Decision

Hearing Held on 17 December 2019

Site visit made on 17 December 2019

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 March 2020

Costs application in relation to Appeal Ref: APP/W3520/W/18/3215925 Grange Farm, Potash Lane, Wyverstone IP14 4SL

- 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 Mid Suffolk District Council for a partial award of costs against Mr G Warner.
 - The hearing was in connection with an appeal against the refusal of the Council to grant subject to conditions planning permission for the use of land for the stationing of caravan for residential purposes for touring caravan site manager.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) 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. PPG also makes it clear that costs cannot be claimed for the period during the determination of the planning application although all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in determining whether or not costs should be awarded.
3. The crux of the Council's claim in this case relates to the appellant's submission of evidence and specifically that relating to the Council's position on the matter of housing land supply. The Council argues that the appellant's submission was unacceptably late, substantial and required additional time and resource to respond to. In disagreeing with the Council on their published supply position, the appellant pointed out in their costs response that the Council changed their position on the matter of housing supply part way through the appeal process and that they were not given an appropriate opportunity to respond which they did so as soon as they were reasonably able. The Council's costs claim relates to the time and resources that they devoted to responding to the appellant's position on housing land supply.
4. As I have alluded to in my decision on the appeal case, the appellant's position on housing land supply was set out in a written submission made to me a

- number of days before the hearing. I resolved, with the agreement of the main parties, to deal with the matter as an exchange of correspondence, accordingly giving the Council time to properly digest the substance of the appellant's position. Due to the Council electing to seek advice to respond from an external consultant and taking into account how close the hearing was to the festive break, a date of mid January was agreed for them to respond. The appellant was then given an opportunity to have a final say on that response.
5. The appeal was submitted in early November of 2018. This was following the Council's refusal of planning permission in July of the same year. The Council's delegated officer report for the application sets out, amongst other things, the main issues of the case, the policy background and consultation responses as well as the reasons for a recommendation of refusal. There is no mention in the report of the Council's housing land supply position. The appellant explained that the relevant position as far as they understood it was taken from a delegated officer report on a different application concerning the erection of two detached dwellings at Winchester House, Rectory Road, Wyverstone. This set out that the Council were unable to demonstrate the supply of sites as required by the Framework. The report is dated early July 2018. It seems reasonable for the appellant to conclude therefore that, at the time they submitted their appeal in November, the Council did not have the required supply of housing sites.
 6. There were a number of delays to fixing a date for the hearing as well as arranging for an available Inspector. The Council's hearing statement is dated early November 2019. The appellant confirmed that the statement reached them by the middle of that month. The Council's statement explains that they are able to demonstrate the required supply of housing sites based on evidence gathered and assessed, obviously since the position as it was when the Winchester House application was determined. The appellant advanced that the receipt of the Council's statement was the first notification they had pertaining to the Council's updated position on housing land supply. The appellant explained that they had between mid November and the date of the hearing which was mid December to formulate a response to the Council's position.
 7. Given the change of position, it seems reasonable to me that the appellant be given opportunity to respond. In regard to the appeal timetable, the next opportunity to do this would have been the hearing itself. The fact that the appellant submitted their position a few days before the hearing was perhaps far from helpful but in the circumstances arguably not surprising. I am also of the view it would have been helpful for the Council to have informed the appellant, and the appointed Inspector, of the revised housing land supply position at the time it changed. This may have then allowed the appellant time within the appeal timetable to respond, in time for the Inspector to be clear on the substance of both positions or allow questions to be asked during the hearing itself.
 8. On receipt of the appellant's position prior to the hearing I agreed the aforementioned actions with the main parties and whilst this elongated proceedings I considered it the fairest action to all involved taking into account also the time of year the hearing took place at. The exchange of correspondence meant proceedings on the day of the hearing could focus on

the other issues of the case which I was of the view was the most efficient use of time all things considered. This aside, it was the Council's decision to seek external consultant advice on their response and not something either I or the appellant insisted upon. The request to seek external advice was clearly an exacerbating factor to the time it took for their response.

9. It seems to me that, taking into account the above, the appellant's response on the matter of housing supply was to be expected given they only knew about it a month or so before the hearing date. Had the Council informed all parties of the change when it happened, such a late submission could have been avoided. As I have said the appellant's actions in submitting at the time they did was bordering on unhelpful and did cause a delay, but I cannot lay all of the proverbial blame at their door for having done so, again taking into account the above. In any event, being unhelpful does not necessarily translate to being unreasonable for the purposes of a successful claim for costs in a planning appeal.

Conclusion

10. I do not therefore consider that there has been such behaviour by the appellant in this particular case in their conduct during the appeal process so as to amount to unreasonable behaviour and the effects thereof as explained by PPG. An award of costs is accordingly refused.

John Morrison

INSPECTOR