



Costs Decision

Site visit made on 1 October 2020

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 13th October 2020

Costs application in relation to Appeal Ref: APP/Z1510/W/20/3249484 Land at Clifton House, Harrow Cross Road, Sible Hedingham CO9 3RR

- 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 M Jennings for a full award of costs against Braintree District Council.
 - The appeal was against the refusal of planning permission for the erection of 2 pairs semi-detached two bedroomed dwellings.
-

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, 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. The PPG states that awards against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. The applicant has raised both procedural and substantive matters.
3. Firstly, the applicant contends that the Council should have considered the absence of a 5 year housing land supply (HLS) at the time of the original application. However, the Council stated in the officer's report that a 5 year HLS could be demonstrated. There appears to have been little evidence from the applicant at that time to show otherwise. At the appeal stage, the Council accepted that it did not have a 5 year HLS. While a tilted balance was not set out in the Council's appeal statement, the officer's report had found that such a balance would not find in the proposal's favour. My decision has come to the same conclusion. Therefore, no unreasonable behaviour leading to unnecessary or wasted expense has occurred in respect of the first matter.
4. Secondly, the applicant argues that the Council should not have used the draft Local Plan (DLP) at the time of the application due to doubts over its progress. While the examination of the DLP has been lengthy, it was only in May 2020 that the Inspector found it to be unsound. It was not unreasonable for the Council to afford the DLP some weight at the application stage. It would have been helpful if the Council had acknowledged the latest progress with the DLP in its July 2020 appeal statement. However, the Council's case focused on the conflict with the adopted development plan and my decision has reached similar findings. Therefore, no unreasonable behaviour leading to unnecessary or wasted expense has occurred in respect of the second matter.

5. Thirdly, the applicant contends that the Council did not accurately describe the route from the site into the village or address the option of cycling. Although the route is not described in detail within the officer's report, key features such as no pavements are included. Cycling is not considered explicitly in the report. It is not clear whether the Council would have reached a different view on access to services if cycling had been considered. However, at the appeal stage the Council confirmed that cycling would have similar drawbacks to walking in terms of the route. My decision makes a similar finding. In addition, it is not clear that the appeal decision at Foxearth was sufficiently similar to this case. Therefore, no unreasonable behaviour leading to unnecessary or wasted expense has occurred in respect of the third matter.
6. Finally, the applicant argues that the Council failed to identify the need for ecology and tree surveys at the validation stage or during the application process. Such surveys were not required for the previous application. Moreover, the applicant states that the Council did not substantiate its concerns at the appeal stage. The lack of communication from the Council was unfortunate. The validation checklist indicates that such surveys are likely to be necessary, irrespective of changes to internal consultation with specialist officers since the previous application. The Council has also provided little explanation for such surveys even at the appeal stage. However, given that the site contains well-established trees and vegetation, my decision has found that it is necessary to undertake such surveys. The absence of these surveys contributed in part to the dismissed appeal. Therefore, while there has been some unreasonable behaviour from the Council in respect of the fourth and final matter, it has not led to unnecessary or wasted expense at the appeal stage.
7. In conclusion, and having considered the applicant's various points, I find that no unreasonable behaviour leading to unnecessary or wasted expense in the appeal process has been demonstrated. Therefore, no award of costs is made.

Tom Gilbert-Wooldridge

INSPECTOR