



Costs Decisions

Hearing held on 29 January 2020 and 8 March 2021 (virtual)

Site visit made on 9 March 2021

by Jonathan Manning BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 April 2021

Costs Application A: in relation to Appeal Ref: APP/V3120/W/19/3233677 at Former Cricket Pitch, Northcourt Lane, Abingdon

- 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 Vale of White Horse District Council for a partial award of costs against The Trustees of Abingdon Vale Cricket Club.
 - The hearing was in connection with an appeal against the refusal of outline planning permission for the erection of a three-storey building comprising 10 no. residential apartments with associated access, car parking and landscaping and creation of community open space.
-

Costs Application B: in relation to Appeal Ref: APP/V3120/W/19/3233677 at Former Cricket Pitch, Northcourt Lane, Abingdon

- 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 Vale of White Horse District Council for a partial award of costs against The Trustees of Abingdon Vale Cricket Club.
 - The hearing was in connection with an appeal against the refusal of application for outline planning permission for the erection of a three-storey building comprising 10 no. residential apartments with associated access, car parking and landscaping and creation of community open space.
-

Decision

1. Costs application A and B are both refused.

Preliminary Matter

2. Both applications relate to the same appeal that was withdrawn by the Appellant on 15 November 2020. The appeal was linked with another appeal¹ that has now been determined.

Reasons

3. The Government's Planning Practice Guidance² (the PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

¹ APP/V3120/W/19/3241871

² Paragraph 030 (Reference ID: 16-030-20140306)

Application A

4. The appeal was lodged in July 2019 and the development proposed would have seen the delivery of 10 residential apartments. At the time of submitting the appeal, the Appellant was of the view that in accordance with Policy CP24 of the Vale of White Horse Local Plan Part 1, 2016 (LP P1) there was no need to make provision for affordable housing. The Appellant was aware that the revised National Planning Policy Framework (the NPPF) 2019 altered the previous position of national policy by setting out that major development (10+ dwellings) should make provision for affordable housing. However, the Appellant considered that there was inconsistency with Policy CP24, which it considered to be up-to-date and that in the absence of any statement from the Council to the contrary, LP P1 still had primacy in decision making, in accordance with Paragraph 213 of the NPPF. I do not consider this position to be unreasonable.
5. The Council has referenced footnote 23b in the now adopted Vale of White Horse Local Plan Part 2 (LP P2) that was initially put forward in February 2019 through the publication of the Additional Proposed Modifications which were submitted to the Secretary of State for examination of the Plan. This set out that Policy CP24 of the LP P1 had been superseded by the revised NPPF.
6. The Appellant has set out that it simply wasn't aware of the footnote until it was pointed out to them by the Council shortly before the first hearing. Given that the LP P2 was adopted in October 2019 after the appeal had been lodged and the Council's statement of case did not refer to the footnote, I see no reason to doubt this claim. Further, once aware of the footnote and that the development plan now confirmed the correct position, the Appellant conceded within 5 working days that the scheme should make provision for affordable housing and sought to provide a draft Unilateral Undertaking to make a financial contribution for affordable housing in lieu of on-site provision. I do not consider this to represent unreasonable behaviour.
7. On a related matter, the Council has set out that the Appellant relied on an outdated PPG reference in their appeal statement. I accept that this was a genuine mistake. Further and in any event, the Appellant has set out that it would not have changed their case at that time, because the position that they relied upon was that the development plan should take primacy for decision making.
8. Given all of the above, I consider that the Appellant has not acted unreasonably with regard to Application A.

Application B

9. As set out above, this appeal was withdrawn on 15 November 2020. The PPG states³: *...Appellants are encouraged to withdraw their appeal at the earliest opportunity if there is good reason to do so. If an appeal is withdrawn without any material change in the planning authority's case, or any other material change in circumstances relevant to the planning issues arising on the appeal, an award of costs may be made against the appellant if the claiming party can clearly show that they have incurred wasted expense as a result.*

³ Paragraph: 054 Reference ID: 16-054-20161210

10. The Council are of the view that: there have been no changes in circumstance; the Appellant should have fully understood the requirements of the development plan; and submitting the appeal in the absence of viability information meant it stood no reasonable prospect of success.
11. The initial approach of the Appellant was to provide replacement playing field/pitch provision at the Abingdon Vale Cricket Club. However, at the hearing the Appellant confirmed that this was no longer the case. Through the subsequent discussions at the hearing, it was agreed that the potential for a financial contribution to provide off-site replacement playing field/pitch provision be explored between the Appellant and the Council during the upcoming adjournment of the hearing.
12. I am of the view that this represents a material change in circumstance. Clearly, it was through the subsequent discussions, particularly in terms of the level of financial contribution that might be required, that the issue of viability came to the fore. Given this and my findings in terms of Application A (the Appellant's approach to affordable housing), I am content that the Appellant has not behaved unreasonably in terms of the particular matters raised by the Council.
13. From the evidence provided, the Appellant appears to have been aware of the viability issues in May 2020, when it met with the Council. Therefore, I consider that the Appellant could have formally withdrawn the appeal much sooner than it did in November 2020. Whilst this could be construed as unreasonable behaviour, there is no evidence before me to suggest that this has resulted in any unnecessary or wasted expense for the Council. This is due to the fact that the same discussions in terms of the financial contribution for playing field/pitch provision and wider action list agreed after the hearing, were also relevant to the linked appeal that was not withdrawn and would have therefore taken place in any event.

Conclusion

14. For all of the reasons set out above, I consider that there are no grounds for an award of costs for Application A or B.

Jonathan Manning

INSPECTOR