



Costs Decision

Inquiry Held on 2 -5 February 2021

Site visit made on 17 March 2021

by D J Board BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th May 2021

Costs application in relation to Appeal Ref: APP/H1515/W/20/3256968 Ingatestone Garden Centre, Roman Road, Ingatestone, CM4 9AU

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Redrow Homes Ltd for a full award of costs against Brentwood Borough Council.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for outline planning permission for Demolition and redevelopment of the site to provide up to 110 residential units with associated open space, landscaping, infrastructure and access from Roman Road.
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Decision

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

The submissions for Redrow Homes Ltd¹

2. The submission was made in writing and expanded upon orally. Put simply the applicant submits a full costs application on the basis of unreasonable behaviour on the part of the Council. The application is pursued on both procedural and substantive conduct of the Council. In particular that the Council should have determined the case and not contested the appeal as the overwhelming weight of considerations points to the grant of permission. The applicant considers that at appeal the case advanced by the Council is wholly lacking in substantive merit and raised four specific matters; the planning obligation, landscape and openness evidence, prematurity and the planning balance. As such the applicant is seeking a full award in respect of unnecessary costs which are listed in paragraph 10 of the written application.

The response by Brentwood Borough Council²

3. The response was made in writing and expanded on orally. In short the Council considers that the applicant's submissions are not specific. They do not accept that there has been unreasonable delay in providing feedback. In addition, the Council submits it has reasonably exercised its planning judgement in reaching the view that very special circumstances do not exist in this case.

¹ ID16, ID17

² ID18

Reasons

4. The Planning Practice Guidance (PPG) advises that 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.
5. The same guidance³ provides that the costs of a planning appeal 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.

Procedural

6. On this point the applicant's concern relates to the planning obligation and more specifically a lack of response to requests for information and comments on the drafting. The Council's response suggests that the application is not clear and exact on this point. However, the application included a summary of activity⁴ regarding the progression of the planning obligation. Nonetheless, the issue is whether this summary demonstrates that the Council has behaved unreasonably in its approach to this matter.
7. It is clear from the summary document that discussions on the planning obligation have been ongoing for some time. It also shows that there have been responses from Council officers from both the planning department and legal services. Therefore, whilst I appreciate the applicant would have preferred the progress to have been quicker, the evidence does not suggest that the Council have been deliberately obstructive. Therefore, on this point I do consider that the Council has behaved unreasonably.

Substantive

Landscape and openness evidence

8. The applicant considers that the calling of witnesses on this matter proved to be wholly unnecessary especially as they accepted that the scheme would lead to harm to openness, albeit low. However, the Landscape Statement of Common Ground⁵ sets out that the area of disagreement is the level of the harm. The Council's proof of evidence alleges a significant impact on openness from the scale of the scheme. I appreciate that ultimately the witnesses both agreed that the impact on openness would be low. However, this was not the case at the submission of case and proof stages. In addition, there were other factors where evidence was presented by these witnesses, such as the existing situation, previously developed land and viewpoints. As such I do not agree with the applicant that this part of the inquiry was unnecessary.

Prematurity

9. The Council advanced a case regarding prematurity and specifically suggested that it should be considered as additional harm and tip the balance away from the grant of planning permission. The applicant's oral submissions suggest that their concern is that the Council's case on this lacked justification and that the planning witness did not provide substantive evidence to support the case

³ Reference ID: 16-030-20140306

⁴ ID17

⁵ CD7.12 para 6.0

on this point. The Council's planning proof of evidence addresses the issue at paragraphs 4.29 and 4.30. Whilst brief these paragraphs do address the criteria of paragraph 49 of the Framework. In addition, the Council signposted its concerns on this point in its statement of case⁶ and as such it should not have come as a surprise to the applicant. Therefore, whilst I understand the applicant does not accept this is an issue on the negative side of the balance, the Council's handling of it does no amount to unreasonable behaviour.

Planning balance

10. The nub of the matter on this issue is that the applicant considers that the Council's approach to the weighting of a number of issues that are identified in the position statement⁷ is not correct. In particular that, whilst the applicant acknowledges that judgement can be exercised, it is suggested that the approach should be reasonable. The applicant suggests that the Council has been blind to the considerations which amount to very special circumstances in this case and therefore the weighting and overall planning balance is affected.
11. The Council's planning witness addresses each of the very special circumstances identified in the position statement within her proof of evidence⁸. In each instance she applies a weighting. I understand that in cross examination the weighting changed in some instances in response to questions. Nevertheless, the overall conclusion of the council's witness was that there are no very special circumstances that would outweigh the substantial harms the Council identified by reason of inappropriateness, to openness and prematurity. Overall, this is a matter of judgement and I am satisfied that the Council explained and supported its position at appeal. Therefore, I do consider that there has been unreasonable behaviour on this point.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary expense as described in the PPG, has not been demonstrated. For the reasons given above I refuse the application for an award of costs.

D J Board

INSPECTOR

⁶ CD7.4

⁷ CD7.11

⁸ Paragraphs 4.32-4.36