



Costs Decision

Hearing held on 21 April 2021

Site visit made on 23 April 2021

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 May 2021

Costs application in relation to Appeal Ref: APP/J1915/W/20/3248614 Agricultural land west of Orchard Road, Tewin, AL6 0HN

- 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 Mr Mark Lloyd for a full award of costs against East Hertfordshire District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for temporary consent for siting a mobile home for the husbandry of cattle herd.
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Decision

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

The submissions for Mr Lloyd

2. The costs application was submitted orally at the hearing. The applicant considers that the Council has behaved unreasonably insofar that it refused planning permission. The applicant also considers that the siting of a mobile home had previously been verbally agreed with the Council. The applicant, in their costs application, also referred to how they thought the appeal would be determined in the normal way, by which they meant the written representations procedure.

The response by East Hertfordshire District Council

3. The Council responded by saying that without a written application for costs, they had no comment to make other than that they considered they did not act unreasonably.

Reasons

4. The 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.
5. The PPG states that "*where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application*".

6. The reason for refusal set out in the decision notice is complete, precise, specific and relevant to the application. It also clearly states the policies of the East Herts District Local Plan (2018) that the development would conflict with. This reason has been adequately substantiated by the Council in its Officer Report, Appeal Statement and at the Hearing.
7. On the matter of pre-application discussion, early engagement, as paragraph 39 of the Framework points out, has the potential to improve the effectiveness of the planning system for all parties. Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community. However, judging the relevance and applicability of 'in-principle' pre-application advice and whether to act on it remains the responsibility of the applicant. The Council was not bound to determine the application in accordance with any pre-application advice it had given and, on further detailed consideration of the submitted application, found that it could not be substantiated. No evidence was submitted in the appeal of any previous discussions. However, and while I have no reason to doubt that discussion did take place, this in itself does not mean that the Council acted unreasonably in refusing planning permission and after considering the information that accompanied the planning application.
8. I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme and therefore the appeal could not have been avoided. I have found that the Council had reasonable concerns about the impact of the development which justified its decision. The applicant had to address those concerns in any event.
9. As a result, it follows that I cannot agree that the Council has acted unreasonably in this case. As such there can be no question that the applicant was put to unnecessary or wasted expense. I find nothing to suggest that a decision was not reached on the basis of the planning merits of the development.
10. On the matter of the appeal procedure not being as per requested, or assumed, by the applicant, The Planning Inspectorate (PINS) may, if it is considered necessary, determine that the appeal should follow a different procedure. In this case, it was necessary for me to test the evidence by questioning the main parties and that could only occur at a hearing. This is not therefore a reason to award costs and, in any event, the choice of procedure was made by PINS and not the Council.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance has not been demonstrated. Therefore, a full award of costs is not justified.

A M Nilsson

INSPECTOR