



Costs Decisions

Site visit made on 19 July 2021

by Martin Chandler BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 August 2021

Costs Application A in relation to Appeal Ref: APP/X0360/W/21/3269974 30 Grazeley Road, Three Mile Cross, Reading RG7 1BJ

- 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 Brian Endean for a full award of costs against Wokingham Borough Council.
 - The appeal was against the Full application for the proposed subdivision of the site and the erection of a 3 no. bedroom dwelling with detached garage.
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Costs Application B in relation to Appeal Ref: APP/X0360/W/21/3269974 30 Grazeley Road, Three Mile Cross, Reading RG7 1BJ

- 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 Wokingham Borough Council for a full award of costs against Mr Brian Endean.
 - The appeal was against the Full application for the proposed subdivision of the site and the erection of a 3 no. bedroom dwelling with detached garage.
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Decision

1. Both applications for awards of costs are refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably, and that the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Awards can be based on either procedural or substantive matters.
3. The appellant is of the view that the Council advised them to proceed with a proposal despite an 'in principle' objection regarding public safety. It is suggested that such advice has resulted in unnecessary and wasted expense. Despite this, a timeline provided by the Council confirms that the Detailed Emergency Planning Zone (DEPZ) for the Atomic Weapons Establishment (AWE) site at Burghfield was extended after pre-application advice was provided in relation to the proposed development. Such timing for the appellant is of course unfortunate, but the evidence before me confirms that the Council did not deliberately mis-lead the appellant. Consequently, in relation to this application for costs, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that therefore an award of costs is not justified.

4. Following notification of the appeal, the Council wrote to the appellant, advising them of a recent appeal decision and judgement that considered matters in relation to the DEPZ. Within that letter, the appellant was advised that in the view of the Council, these decisions demonstrated that there was no reasonable prospect of the appeal succeeding. Accordingly, it was confirmed that if the appeal was not withdrawn, the Council would proceed with a claim for costs.
5. The PPG states that the right of appeal should be exercised in a reasonable manner. It also states that an appellant is at risk of an award of costs being made against them if the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.
6. Policy TB04 of the MDD relates to development in the vicinity of the AWE. However, the policy itself does not explicitly say residential development within the DEPZ will be wholly resisted. Instead, it states that development will only be permitted where the applicant demonstrates that the increase in the number of people living, working, shopping and/or visiting the proposal can be safely accommodated having regard to the needs of the "Blue light" services and the emergency off-site plan for the AWE. In practice, this may mean that new residential development within the DEPZ cannot be achieved. However, this is not explicit within the development plan. Accordingly, although the Council were right to draw the appellant's attention to the recent appeal decision and High Court judgement, in my view, these decisions do not automatically mean that an award of costs was inevitable.
7. In my judgement, based on the evidence before me, and despite my findings regarding the DEPZ, the proposal is not clearly contrary to the development plan. The DEPZ represents a substantial constraint but the policy provides the opportunity to justify new development. The appellant has failed to provide such justification but that does not mean that they have acted unreasonably. Accordingly, as with application A, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated by the appellant, and that therefore an award of costs is not justified.

Martin Chandler

INSPECTOR