
Costs Decision

Site visit made on 15 September 2021

by Mrs H Nicholls FdA MSc MRTPI

An Inspector appointed by the Secretary of State

Decision date: 26 October 2021

Costs application in relation to Appeal Ref: APP/C1760/W/21/3276939 Land at Sleepy Hollow Farm, Ampfield Hill, Ampfield, SO51 9BD

- 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 Test Valley Borough Council for a full award of costs against Rivendale Homes Ltd.
 - The appeal was against the refusal of planning permission for erection of office building (Use Class B1) (resubmission of 20/00310/FULLS).
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Decision

1. The application for costs is refused.

Reasons

2. 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. The PPG goes on to say that unreasonable behaviour in the context of an application for an award of costs may be either (i) procedural – relating to the process; or (ii) substantive – relating to the issues arising from the merits of the appeal.
3. The PPG also indicates that an appellant is at risk of costs being awarded against them if the appeal had no reasonable prospect of succeeding, either if the proposal is clearly contrary to the development plan, and no other material considerations are advanced or adequately evidenced that indicate the decision should have been made otherwise, or when the appeal follows a recent appeal decision in respect of the same, or a very similar, development when there has not been a change in circumstances in the intervening period.
4. The Council seeks an award of costs on the basis that the pursuit of the appeal was unreasonable as it had no reasonable prospect of succeeding, being substantially the same as the earlier proposal in relation to which both grounds had been found unacceptable by an Inspector. The Council indicate that it has spent considerable time notifying members of the public and Parish Council, reviewing the submission, corresponding with the Planning Inspectorate and preparing evidence with input from Council's Policy and Landscape Officers which has incurred great expense.
5. The appellant refutes that the scheme was substantially the same as the earlier proposal; with significant material differences in both substance and evidence submitted in relation thereto. The appellant highlights the availability of rights to appeal a refusal of planning permission and that the Council was able to consult various specialists for input, as it had previously, but opted not to. The

appellant also advances that alternative judgements could have been reached in relation to the compliance with the development plan as a whole, and on the basis of the economic benefits of the scheme in the context of the National Planning Policy Framework and changes to employment practices that have arisen since the beginning of the COVID-19 Pandemic.

6. In my view, the appellant had a right of appeal and was not unreasonable in having exercised that right and there was a prospect of it succeeding. Though it has not succeeded because I have found harm in relation to the second ground, I note that changes were made when compared to the earlier scheme which were sufficient to enable an assessment based on its own merits, rather than repeating the same assessment as had been undertaken by my colleague previously. I accept that whilst the appeal was not submitted with a Certificate of Lawfulness, the volume and nature of the submitted evidence highlights the effort to which the appellant has also gone to distinguish the current appeal scheme from the former.
7. Consequently, I do not regard that the appeal had no prospect of success and in pursuing it, the appellant has not put the Council to unnecessary or wasted expense. For these reasons and having regard to all other matters raised, a full or partial award of costs is therefore not justified.

Hollie Nicholls

INSPECTOR