
Costs Decision

Inquiry (Virtual) held on 11 May and 20 to 23 September 2021

Site visit made on 28 September 2021

by M Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 November 2021

Costs application in relation to Appeal Ref: APP/X0415/W/20/3265964 Land off High View, Chalfont St Giles

- 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 Buckinghamshire Council – East Area (Chiltern) for a full award of costs against Paradigm Housing Group.
 - The inquiry was in connection with an appeal against the refusal of planning permission for erection of 42 affordable dwellings and associated access, parking and landscaping.
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Decision

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

The Submissions

2. The costs application and the response from the appellant were submitted in writing. The Council did not submit any further comments following the appellant's response.

Reasons

3. The Planning Practice Guidance (PPG) states 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.
4. The Council contends that the proposal clearly conflicted with Policy CS9 of the Core Strategy for Chiltern District (CS) as it was not demonstrated that the housing could be secured as affordable housing in perpetuity. It is put forward that the proposal could only be inappropriate development in the Green Belt as a consequence. Additionally, it is argued that the Government has made clear, through means such as the Written Ministerial Statement (WMS) dated 17 December 2015, that unmet need is unlikely to clearly outweigh harm to the Green Belt, and any other harm, so as to establish very special circumstances justifying development. For these reasons the Council claims that the proposal had no realistic prospect of success, the appellant's pursuance of the appeal was unreasonable, and this resulted in unnecessary and wasted expense.
5. The Council also asserts that it incurred wasted expense because of an adjournment arising from the unreasonable introduction of new evidence within the proof of evidence of the appellant's housing need witness.

6. The PPG explains that an appellant is at risk of an award of costs being made against them if an appeal had no reasonable prospect of succeeding. This may occur when 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.
7. Unreasonable behaviour may also include the introduction of fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.
8. Whilst I found that the proposal would be inappropriate development in the Green Belt, and the harm arising from the proposal would not be clearly outweighed by other considerations so as to amount to very special circumstances, the other considerations nevertheless weighed substantially in favour of the proposal.
9. Even if the proposal was inappropriate development and conflicted with the development plan because the affordable housing could not be secured in perpetuity, factors identified within my decision letter indicate that the affordable housing would have been retained over a long period. Moreover, having regard to the housing supply, delivery and affordability issues in Chalfont St Giles and the wider Chiltern area, the other considerations would have attracted substantial weight in any event. Furthermore, I attached limited weight to the WMS. Although the appeal was dismissed, I do not consider that the appeal clearly had no prospect of succeeding. The appellant thus behaved reasonably in pursuing the appeal to its conclusion.
10. It is not uncommon for new evidence to be submitted with an appeal in response to objections. However, Annexe J of the Procedural Guidance¹ sets out that any arguments in reaction to documents such as planning officer reports, and any data referred to and outlined in any assessment methodology and the assumptions used in arguments, should be included in a full statement of case. Furthermore, Annexe F of the Procedural Guidance states that proofs of evidence should not contain new areas of evidence.
11. In this case the new evidence was directly relevant to the Council's concerns and the Council did not argue that the evidence was inadmissible. If the appellant provided the new evidence at the start of the appeal, as it could have reasonably done, the Council would likely have defended its position by appointing an expert housing need witness in a similar manner to the way that it did following the adjournment. It has not been explained how the adjournment led directly to expenses being incurred by the Council that would not otherwise have been necessary.
12. Furthermore, the Council made its application for an adjournment around 3 weeks after receipt of the proof of evidence. Although the appeal was adjourned in the interests of fairness for all parties, I cannot be certain that the adjournment would have been necessary if the Council had raised its concerns regarding the evidence promptly after receiving the proof. For these reasons, I am not satisfied that the submission of the evidence led to unnecessary or wasted expense for the Council.

¹ Procedural Guidance: Planning appeals – England

Conclusion

13. Unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has not been demonstrated. The application for an award of costs is refused.

Mark Philpott

INSPECTOR