



Costs Decision

Hearing Held on 16 November 2021

Site visit made on 16 November 2021

by Tim Wood BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st December 2021

Costs application in relation to Appeal Ref: APP/W1525/W/20/3266141 Bushy Hill Communications Station, Edwins Hall Road, South Woodham Ferrers, Chelmsford Cm3 8RU

- 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 Supported Business Holdings Ltd for a full award of costs against Chelmsford City Council.
 - The hearing was in connection with an appeal against the refusal of outline planning permission for demolition of the existing buildings, structures and masts; redevelopment to provide 7 detached dwellings together with landscaping, roads, footpath and other infrastructure and ancillary works.
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Decision

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

The submissions for the appellant

2. The application was made in writing prior to the Hearing. At the Hearing the appellant referred to the Council's recent submission in relation to the South Woodham Ferrers Neighbourhood Plan. It was stated that the late submission of new evidence was unreasonable and has involved additional time and expense to deal with and that reference to it lacked precision.

The response by the Council

3. The response was made in writing prior to the Hearing. In relation to the South Woodham Ferrers Neighbourhood Plan, the Council stated that the referendum for it was on 21 October 2021 and that it is due to be 'made' at the Council's meeting in early December. The Council added that the appellant is fully aware of its contents. In relation to timing, the Council could not realistically have acted any sooner.

Reasons

4. The national Planning Practice Guidance (PPG) states that parties will normally be expected to meet their own costs in relation to appeals and costs may only 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. In my main decision, I have found that the proposal would be unacceptable and identified conflict with policies within the Local Plan. Therefore, the Council has not prevented or delayed development which should clearly have been permitted. In addition, they have presented evidence which supports their objections.
6. In relation to the Council's 3rd reason for refusal in respect of the effects on a protected site, the appellant submitted a Unilateral Undertaking with the appeal which satisfies the Council's objection. I find nothing unreasonable in the Council's actions as there was no Undertaking submitted with the planning application and so no mechanism to secure mitigation of these effects at the time that it determined the application.
7. Reference is made within the Council's case to the South Woodham Ferrers Growth Area. It sets out why this does not alter its objections to the proposal. There is neither an absence nor unreasonableness of actions on the Council's behalf.
8. The Council have made it clear that when referring to 'temporary' buildings, the assessment is a visual one. The appellant states that the Council have made vague, generalised or inaccurate assertions and, apart from the preceding point, the appellant does not specify what these are.
9. The appellant states that all aspects of the proposed development could be controlled by conditions and so refusing permission in such circumstances is unreasonable. The application is in outline form with matters of access, layout and scale to be considered now, as well as the principle of development. Whilst some aspects of development would be capable of control by conditions, some aspects are not. I do not consider that the objections that the Council raise and those that I have identified could be overcome by conditions and so find that the Council has acted reasonably in this respect.
10. In relation to the Neighbourhood Plan, the Council has acted in a timely manner in advising of the result of the referendum and the, then likely, adoption. Given the relevant date, I do not find that the Council has unnecessarily submitted late evidence. It was correct to submit this information to the appeal as, by the time of issuing this decision the Neighbourhood Plan is adopted.
11. As a consequence of my findings, I conclude that the Council's actions have not been unreasonable. Therefore, the conditions necessary for an award of costs have not been satisfied.

T Wood

INSPECTOR