
Costs Decision

Site visit made on 1 February 2022

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd March 2022

Costs application in relation to Appeal Ref: APP/K0425/W/21/3278583 Woodland at Fieldhead Gardens, Bourne End SL8 5RN

- 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 MMDM Developments Limited for a full award of costs against Buckinghamshire Council.
 - The appeal was against the refusal of outline planning permission for revised outline application for erection of 3 no. detached dormer bungalows and ancillary works.
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Decision

1. The application for a full award of costs is partially allowed, in the terms set out below.

Reasons

2. Planning Practice Guidance 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. Planning Practice Guidance provides a number of potential examples of unreasonable behaviour by Councils. These include lack of co-operation with the other party, persisting in objections to a scheme or elements of a scheme which the Secretary of State or an inspector has previously indicated to be acceptable, among other things.
3. There is nothing before me demonstrating that the Council worked proactively with the applicant on biodiversity evidence, which was deemed out of date. Quite clearly, it would have been reasonable for the Council to engage with the applicant pursuant to Paragraph 38 of the National Planning Policy Framework. The Council did not act proactively in this context, and this represented a lack of co-operation under the terms of Planning Practice Guidance, amounting to unreasonable behaviour.
4. For clarity, I cannot see how Paragraph 38 of the National Planning Policy Framework should be limited to pre-application engagement. The language is clear that Council's should work proactively with applicants; those who have submitted planning applications.
5. Furthermore, it was clear from the previous appeal decisions at the site that biodiversity was not a determinative matter, and there was no evidence that policy, site characteristics, or other material considerations had shifted to the extent that this would have changed under the current appeal.

6. It is reasonable to say that if the Council had engaged proactively with the applicant, and the applicant had produced up to date evidence as part of the application, biodiversity would not have formed a reason for refusal. Consequently, there has been wasted expense in relation to the production of biodiversity evidence at appeal.
7. There were a number of material considerations, including engineering solutions, and previous appeal decisions at the site, which when taken together strongly suggested that root protection areas should not have been a reason for refusal or grounds to resist under the appeal.
8. In conjunction with a lack of persuasive evidence from the Council, such as technical reporting demonstrating that root protection areas were a substantive matter, the Council has acted unreasonably in refusing on these grounds, leading to wasted expense on the part of the applicant.
9. Given my findings under the appeal relating to fragmentation of the woodland and development pressure on trees from future occupiers, and the other appeal decisions at the site, I cannot conclude that the Council's behaviour was unreasonable or led to wasted expense on these matters.
10. However, the Council were clearly mistaken in relation to whether the first appeal decision continued to be a material consideration in the first instance. This is acknowledged by them and whilst unintentional, this error was unreasonable behaviour which did lead to the applicant seeking legal advice on the matter, which was wasted expense on their behalf.
11. Given my findings under the appeal relating to the second appeal decision at the site, and that it was a legitimate competing material consideration, the Council's position was not unreasonable in its substance and the applicant's expense in relation to their second legal opinion was not wasted.
12. Although the five year housing land supply positions are markedly different, given the technical nature of the arguments presented, I am not persuaded that it is possible to determine that one or the other was manifestly untrue.
13. Notwithstanding, even if the Council yielded their position and adopted the position of the applicant, given my findings under the appeal the presumption in favour of sustainable development would not have applied and substantive grounds for refusal would have remained.
14. Altogether, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and a partial award of costs is justified.

Costs Order

15. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Buckinghamshire Council shall pay to MMDM Developments Limited the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred by the applicant in assessing and responding to the Council's first reason for refusal insofar as it relates to root protection areas, the first legal opinion sought in relation to the first appeal decision, and the second reason for refusal in its entirety.

16. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, such costs are to be assessed in the Senior Courts Costs Office.

Conclusion

17. For the reasons given, the application for a full award of costs is partially allowed.

Liam Page

INSPECTOR