
Costs Decision

Site visit made on 23 November 2021

by S D Castle BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2022

Costs application in relation to Appeal Ref: APP/U3935/W/20/3263948 Land to the North of, Nightingale Lane, South Marston, Swindon SN3 4SR

- 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 Swindon Borough Council for a full award of costs against Bower Mapson Homes Ltd.
 - The appeal was against the refusal of planning permission for erection of 5 no dwellings, new public park and woodland and associated works.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expenses in the appeal process.
3. The PPG¹ provides examples of behaviours that risk a substantive award of costs. With reference to those examples, the applicant contends that the appeal had no reasonable prospect of succeeding given that:
 - 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;
 - the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period;
4. Whilst I have agreed with the Council that the development is contrary to the development plan as a whole, the appellant has advanced numerous material considerations supported by national policy, including the delivery of housing in an area without a five year supply of deliverable housing.

¹ PPG Paragraph: 052 Reference ID: 16-052-20140306 - Revision date: 06 03 2014

5. Furthermore, the development is materially different to that dismissed in the recent appeal decision² on the same site. It proposes 5 dwellings over a smaller area than the 8 dwellings previously dismissed and is accompanied by a completed legal agreement securing public access to the proposed area of open space. In making these amendments to the previously dismissed scheme, the appellant has acted reasonably in attempting to address the reasons for dismissal set out in the recent appeal decision. Whether these amendments have succeeded in appropriately addressing the reasons for dismissal is a matter of planning judgment. Whilst I have found favour with the Council's overall decision to refuse permission, I am not persuaded that the decision to appeal was so fundamentally flawed, or without foundation, so as to have no reasonable prospect of succeeding.
6. The applicant also contends that the appellant behaved unreasonably by submitting amended and additional information, including a Heritage Statement, at the appeal stage. The proposals were amended during the planning application process and the appellant advises that the Heritage Statement of Case submitted at the appeal stage reflects the amended proposals. I find this to be a reasonable position for the appellant to take.
7. The PPG sets out that parties in planning appeals and other planning proceedings normally meet their own expenses. The PPG is also clear that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. I am not persuaded that the appellant's behaviour has been unreasonable or has directly caused the Council to incur unnecessary or wasted expense in the appeal process.

Conclusion

8. For the reasons above, and having regard to all other matters raised, an award for costs is not justified.

S D Castle

INSPECTOR

² Appeal Ref: APP/U3935/W/19/3235217