



Costs Decision

Site visit made on 12 August 2022

by James Blackwell LLB (Hons) PgDip

an Inspector appointed by the Secretary of State

Decision date: 23rd August 2022

Costs application in relation to Appeal Ref: APP/G1630/W/22/3291784 Land adjacent Blenheim Way, Shurdington, Cheltenham GL51 4TF

- 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 Mr John Winson for a partial award of costs against Tewkesbury Borough Council.
 - The appeal was against a refusal of permission in principle for erection of a single infill dwelling.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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. Examples of a Council's unreasonable behaviour can include prolonging proceedings by introducing a new reason for refusal, or introducing fresh and substantial evidence at a late stage, which necessitates extra expense for preparatory work that would not otherwise have arisen.
3. In the present appeal, the Council included a single reason for refusal in its decision notice. This hinged on whether the proposed development would constitute infill development, and consequently whether or not it would constitute inappropriate development within the Green Belt. The applicant based its evidence and appeal statement on matters pertaining to this sole issue.
4. The Council subsequently sought to introduce an additional reason for refusal in its statement. This reason alleged that "*the appeal proposal would fail to be a sustainable form of development having regard to national and development plan policies in respect to the delivery of new housing*". In turn, the appellant prepared and submitted a rebuttal to address this additional argument.
5. The Council has since acknowledged that it erroneously stated that the development would fail to be a sustainable form of development having regard to national and development plan policies. Nonetheless, it alleges that the applicant "*should have known that the Council was wrong to introduce these reasons and could have approached the council before committing to any rebuttal*". I do not accept this position. As part of any appeal, it is commonplace for parties to respond to the opposing party's evidence. The Council should

therefore have expected the applicant to respond substantively to the additional arguments raised in its statement.

6. Given that the Council now acknowledges this additional reason for refusal was included "in error", it follows that the time and expense incurred by the applicant in defending this reason for refusal was ultimately redundant. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated, and that a partial award of costs is justified.

Costs Order

7. 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 Tewkesbury Borough Council shall pay to Mr John Winson the costs of the appeal proceedings described in the heading of this decision. Such costs shall be limited to those costs incurred in the preparation and submission of evidence to address the Council's argument that the proposal would not represent a sustainable form of development, having regard to national and development plan policy; such costs to be assessed in the Senior Courts Costs Office if not agreed.
8. The applicant is now invited to submit to Tewkesbury Borough 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.

James Blackwell

INSPECTOR