

Costs Decision

Site visit made on 26 August 2022

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 September 2022

Costs application in relation to Appeal Ref: APP/W3520/W/22/3296665 Land adjacent to Hascot Hill, Barking IP6 8HL

- 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 Arnold for an award of costs against Mid Suffolk District Council.
 - The appeal was made against the refusal of outline planning permission for erection of dwelling (all matters reserved).
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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 where a party has behaved unreasonably and such behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. The applicant's basis for claiming full costs relates to the Council's alleged unreasonable behaviour in not determining like cases in a similar manner, failing to produce evidence to substantiate its reason for refusal, and not following well-established case law with regard to decision-taking, in particular with regard to the presumption in favour of sustainable development; and, as a result, preventing development which should clearly be permitted.
 4. Taking each of these grounds in turn, the applicant drew attention to residential developments in Barking, which were permitted on sites in the countryside. In those cases, unlike the appeal proposal, it was not found that services and facilities in Needham Market would be inaccessible to future occupiers by means other than private vehicle. However, as noted in my appeal decision, this difference in part depended on the appeal site's location on Hascot Hill. Moreover, the Council seemingly refused permission for the proposal opposite the appeal site for the same reason. The Council was not bound to follow the appeal decision in that case as it was not the decision-taker and, therefore, it was consistent with its own decision in the earlier case. For these reasons, I find that unreasonable behaviour has not been demonstrated by the Council with regard to this matter.
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5. The Council did in my view produce sufficient evidence. In particular, it assessed the availability of services and facilities in both Barking and Needham Market as well as the conditions relating to access to these from the appeal site. As the applicant contends, these were presented in a form, relating to the three objectives of sustainable development, that the National Planning Policy Framework (the Framework) warns against. However, this does not alter or diminish the substance of the evidence.
6. The test in Framework paragraph 11 d) ii. is whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As established by case law, this test must not be reversed¹.
7. In the current appeal, the Council gave reduced weight to the relevant policies but, presumably because they were considered to be partly out-of-date, also sought to engage the presumption in favour of sustainable development included in the Framework. I give limited weight to the significance attributed by the applicant to reference to the presumption in favour in Policy FC1 of the Core Strategy Focused Review. The development plan must be considered as a whole and Policy FC1 does not fully reflect the current version of the Framework.
8. The conclusion on whether or not the Framework's presumption applies will be a material consideration to be weighed in the final balance when considering whether material considerations exist to outweigh any conflict with the development plan, in accordance with section 38(6) of the Planning and Compulsory Act 2004. This is relevant to this case where the Council relied on development plan policies, albeit with reduced weight, and the presumption in favour was engaged.
9. However, the approach taken was not fully clear, particularly the outcome of the assessment required by the presumption. The most likely relevant reference in this regard is in the conclusion section of the officer's report, which indicates that 'failing to achieve the environmental strand of sustainable development, no significant economic or social objectives are achieved to outweigh this harm'. However, if this is intended to relate to the test engaged by the presumption, then this conclusion reverses the proper approach. On the other hand, if it is intended to be an overall conclusion, it is unclear from the rest of the report what the outcome is of the specific test required by the presumption and how this as a material consideration is balanced against any conflict with the development plan.
10. As such, it would not be clear to the applicant what the proper basis for the decision was. However, as these matters ultimately relate to planning judgement it is not possible to infer that had a different approach been taken it would have resulted in permission being granted and thereby negated the need to submit an appeal. Nonetheless, by failing to provide sufficient clarity in the basis for its decision the Council has behaved unreasonably and will have caused the applicant some unnecessary expense through responding to these matters as part of the appeal process. Accordingly, for these reasons I find that unreasonable behaviour resulting in unnecessary or wasted expense, as

¹ *Wenman v SSCLG* [2015] EWHC 925 (Admin).

described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

11. 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 Mid Suffolk District Council shall pay to Mr Arnold the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the Council's approach to assessing the proposal against paragraph 11d) of the National Planning Policy Framework; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Mid Suffolk District 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.

J Bell-Williamson

INSPECTOR