



Costs Decision

Site visit made on 18 October 2022

by V Simpson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 November 2022

Costs application in relation to Appeal Ref: APP/K0425/W/22/3291161 Land lying to the southeast of Lower Icknield Way HP27 9RZ

- 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 Buckinghamshire Council for a full award of costs against Mr Mario Battaglia of Golden Waratah Properties.
 - The appeal was against the refusal of the Council grant permission in principle for application for permission in principle for the development of 7-9 dwellings onsite.
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Decision

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

Reasons

2. Planning Policy Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant considers that the appellant exhibited substantive unreasonable behaviour in pursuing an appeal which had no reasonable prospect of success. The applicant further indicates that the alleged unreasonable behaviour has caused them to incur wasted expense in the process of the appeal.
4. Article 6 of the Human Rights Act 1998 enshrines in UK law the right to a fair trial, and section 78 of the Town and Country Planning Act provides a right to appeal against planning decisions. The right of appeal is therefore established, and the appellant has been able to assert this right. Nevertheless, paragraph 53¹ of the PPG advises that the right of appeal should be exercised in a reasonable manner, and that an appellant is at a risk of an award of costs being made against them if the appeal or ground of appeal has no reasonable prospect of succeeding. An example provided of such behaviour is where; 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.
5. I understand that the outcome of the application will have been a disappointment to the applicant. Nevertheless, the decision notice contained clear and justified reasons for the refusal of the application, which were

¹ Paragraph: 053 Reference ID: 16-053-20140306

soundly based upon the policies contained with the adopted development plan documents.

6. In terms of land use, the appellant has referred to an appeal decision which was made prior to the adoption of the Wycombe District Plan (2019) and the Longwick-cum-Ilmer Neighbourhood Plan (2018). That appeal decision was also made at a time when it was agreed that the Council could not demonstrate a five-year housing land supply. I have found that the circumstances leading to that decision are not comparable with the appeal to which this costs decision relates. Given the significant material change in circumstances, there are no reasonable grounds to indicate that an alternative decision should have been reached.
7. The second reason for refusal indicated that parts of the site are at high risk of surface water flooding and within the Wycombe critical drainage area. Information related to surface water flood risk and the Wycombe Critical Drainage Areas are publicly available. Despite the requirements of Policy DM39 of the Wycombe District Plan and footnote 55 of the National Planning Policy Framework, no flood risk assessment was submitted in support of the appeal, or were the sequential and (if appropriate) exceptions tests undertaken. No substantive evidence has therefore been put forward demonstrating that a decision should have been made otherwise than in accordance with the policy DM39 of the Wycombe District Local Plan. In terms of flood risk the appeal therefore had no reasonable prospect of success.
8. I accept that it has not been demonstrated that this is a case where repeated applications have been made, or the appeal is an attempt to defer enforcement action. However, I have found that no material considerations were put forward either at application or appeal stage, to indicate that an alternative decision should have been made from one which is based upon the policies of the development plan and national planning policy and guidance. As such, the appeal had no reasonable prospect of succeeding.
9. In defending the appeal, the applicant has therefore incurred unnecessary expense.
10. I therefore find that substantive unreasonable behaviour, resulting in unnecessary expense during the appeal process has been demonstrated.

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 Mr Mario Battaglia of Golden Waratah Properties shall pay to Buckinghamshire Council, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Costs Office if not agreed.
12. The applicant is now invited to submit to Mr Mario Battaglia of Golden Waratah Properties, to whose agent a copy of this award has been sent, details of those costs with a view to reaching agreement as to the amount.

V Simpson

INSPECTOR