



Costs Decision

Site visit made 21 March 2023

by Nichola Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2023

Costs application in relation to Appeal Ref: APP/Q3115/W/22/3306138 Tanners Close, Sandy Lane, Horspath, Oxford OX33 1TF

- 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 Richard Robinson (RBW Robinson) for a full award of costs against South Oxfordshire District Council.
 - The appeal was against the failure to give notice within the prescribed period of a decision on a permission in principle application for the conversion and change of use of a barn to residential use
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may be procedural and/or substantive. In this instance, the applicant refers to the Council's alleged unreasonable approach during the application process and the appeal process.
3. The applicant states that the Council failed to give sufficient weight to the up-to-date housing land supply position, which the applicant alleges shows that the Council are unable to demonstrate a 5-year housing land supply. A previous appeal decision¹ in the same district is referred to in support of this. In this decision, dated 25 June 2021, the Inspector found that there was no 5-year housing land supply in the district and therefore the most important policies for determining the appeal were out of date. However, this appeal decision is now almost 2 years old, and I have been supplied with the latest housing land supply statement, dated July 2022, which confirms that the Council can demonstrate a 5.58 years' supply of housing land. I have not been presented with any compelling reason to take a different view. Thus, based on current evidence, the Council is able to demonstrate a 5-year housing land supply and therefore were correct to give full weight to the development plan in determining the application.
4. The applicant also states that the Council gave pre-application advice which included advice on the application of South Oxfordshire Local Plan (LP) policy

¹ Appeal Ref: APP/Q3115/W/20/3265861

EMP3. This advice stated that it was not necessary to carry out a marketing exercise. Consequently, the application was not supported by evidence of marketing. It is stated that this led to the failure to determine the planning application which ultimately resulted in the submission of the appeal and costs incurred defending the appeal.

5. I have been provided with a copy of the pre-application advice given by the Council in which it is stated that an application for a change of use to housing would not need to be supported by a viability study or evidence of one year of active and effective marketing. Whilst the Council failed to determine the application, the indicative reason for refusal states that a residential conversion of the building may be acceptable but without the evidence of a year of active and effective marketing it does not comply with LP Policy EMP3. Consequently, the indicative reason for refusal differs from the pre-application advice given.
6. Whilst I agree that it was unhelpful that the Council's pre-application advice was ultimately not reflected in their indicative reason for refusal, nonetheless this advice constitutes the informal opinion of an officer of the Council which the advice clearly states is not binding on the Council and does not prejudice any decision the Council might make subsequently. In any event, this appeal is against the failure of the Council to determine the appeal within the prescribed time period, not the refusal of Permission in Principle. The Council's indicative reason for refusal was submitted after the appeal had been made, and as set out in my main decision, I have reached a different conclusion to the Council
7. Therefore, I find that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated.

Nichola Robinson

INSPECTOR