



Costs Decision

Site visit made on 11 July 2023

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 August 2023

Costs application in relation to Appeal Ref: APP/J1535/W/22/3313016 Land at the rear of Avenue House, London Road, Latton Common, Harlow CM17 9NJ

- 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 Edit Residential for a full award of costs against Epping Forest District Council.
 - The appeal was against the refusal of the Council to grant outline planning permission for the erection of 6 no. dwellings with access, parking and associated works.
-

Decision

1. The application for an award of costs is allowed, in part, 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.
3. The applicant is seeking a full award of costs on both procedural and substantive grounds. Paragraph 47 of the PPG provides examples of unreasonable behaviour by a local planning authority (LPA), which may lead to an award of costs on procedural grounds. These include lack of co-operation, delay in providing information and the withdrawal of any reason for refusal. Paragraph 49 provides examples of behaviour that may give rise to a substantive award of costs against an LPA, which includes failure to produce evidence to substantiate each reason for refusal on appeal and refusing to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided, or the issues to be considered being narrowed, thus reducing the time and expense associated with the appeal.
4. There is no evidence before me that the LPA, at any point during the application process, requested, or advised the applicant of the need for a S106 agreement to secure financial contributions towards the provision of appropriate mitigation measures in respect of the effect of the development on the Epping Forest Special Area of Conservation. Even if the provision of such information would incur costs for both parties and not result in a different outcome, the applicant should have been made aware of this and given the opportunity to address the matter should it choose to do so. As a result of a

S106 being submitted with the appeal, the LPA withdrew its second reason for refusal. Had the LPA raised this matter earlier, the issues to be considered at appeal and the associated expense could have been narrowed.

5. Following the submission of the planning application, and as a result of seeing relevant consultation responses, the applicant submitted an amended drainage report. The LPA failed to assess this information in reaching its decision and suggest it is not its policy to do so and that it would have been a waste of resources for both parties given that planning permission would have been refused regardless, on matters of principle. The LPA has not defended its drainage reason for refusal. The amended drainage strategy, which was submitted prior to the determination of the application, was confirmed as addressing reason 3, which was subsequently withdrawn by the LPA. The failure to substantiate this reason for refusal, which the applicant responded to prior to the application being determined is unreasonable behaviour and unnecessarily added to the matters to be addressed as part of the appeal and the associated costs.
6. The applicant sought pre-application advice from the LPA, which despite incurring a fee, was littered with errors and included references to completely separate planning applications, development proposals and sites.
7. The LPA accept that there were errors in the pre-application response. However, there is no evidence before me to suggest that these errors led to costs being incurred in the appeal process. The PPG states that costs that are unrelated to the appeal are ineligible. It is evident from the pre-application advice provided by the LPA that the success of any application submitted would be heavily dependent upon the site being a proposed allocation and delivered as a whole. As the site was subsequently sub-divided and its proposed allocation found unsound, the LPA's change of direction, as a result of the change in circumstances, was not unreasonable.
8. The email correspondence provided confirms that the LPA did consider the applicant's affordable housing offer and confirmed that this would not address its concerns. I have also agreed with the LPA that an off-site affordable housing contribution would not meet the relevant tests for planning obligations, and as such would not have contributed to the very special circumstances necessary to justify inappropriate development in the Green Belt.
9. In conclusion, the failure of the LPA to assess all submitted information prior to making a decision and the failure to work proactively with the applicant in seeking to address objections, and to minimise the reasons for refusal or matters that may eventually need to be the subject of an appeal, is unreasonable behaviour. As a result of this behaviour the applicant has had to incur time and the associated costs, in addressing these matters as part of the appeal process.
10. I therefore find that unreasonable behaviour, in respect of reasons 2 and 3 of the refusal notice, 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

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 Epping Forest District Council shall pay to Edit Residential, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in addressing reasons 2 and 3 of the Council's decision notice; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Epping Forest 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.

R. Bartlett

INSPECTOR