



Costs Decision

Site visit made on 20 July 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 September 2023

Costs application in relation to Appeal Ref: APP/M1595/W/22/3298844 Malvina Close, Lower Dunton Road, Horndon on the Hill SS17 8QG

- 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 Julian Macalle (Malvina Properties) for a full award of costs against Thurrock Borough Council.
 - The appeal was against the refusal of planning permission for development described as 'Provision of 5No. self build residential plots, with main services provided. Allowance of individual units c175 square metres with all amenity works and designs to be decided'.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 PPG goes on to provide examples of unreasonable behaviour by local planning authorities, which include amongst other things failure to produce evidence to substantiate reasons for refusal, failure to adhere to deadlines during the appeal process and preventing or delaying development which should clearly be permitted.
4. The costs application contends that the Council behaved unreasonably in several respects, generally relating to the time taken to reach a decision on the planning application, lack of engagement with the applicant, failure to comply with the appeal timetable and lack of evidence to substantiate the reasons for refusal. In response, the Council provided further information regarding the description of the proposed development and the level of engagement during consideration of the application, while not accepting that there is any evidence of unreasonable behaviour on the Council's part.
5. Applications for costs are limited to those costs incurred during the appeal process. Therefore, while I have noted the points raised about engagement with the Council, any costs associated with the planning application process itself fall outside the scope of this application.
6. The Council chose not to submit a Statement of Case in response to the appeal. However, copies were provided of the Officer Report, relevant development plan policies and other information requested via the appeal questionnaire. The questionnaire response was received by the appropriate deadline and

confirmed that no Statement of Case was to be provided. A list of suggested conditions was subsequently provided, in accordance with the appeal timetable, and the appellant had the opportunity to respond.

7. The Council's evidence provided me with sufficient information to understand their case on the main issues. As such, notwithstanding the absence of a separate Statement of Case, the Council did not fail to substantiate the reasons for refusal. Since I have largely reached similar conclusions to the Council on the main issues, it follows that I do not consider that either reason for refusal was fundamentally unreasonable. Against that background, there is no evidence that increased dialogue during the planning application process would have led the Council to a different decision or negated the requirement for an appeal.
8. The Officer Report acknowledged the lack of provision for self-build within the current development plan and the absence of a five year housing land supply and there is no indication that more detailed evidence on either point would have changed the outcome of the planning application. There is also no substantive evidence that explicit comparison between the appeal site and other nearby developments, or further consultation on the revised access plans, would have led the Council to a different decision.
9. Since there is no clear distinction between self-build and custom-build within the relevant statutory framework or national planning policy, the Council's revised description was not prejudicial to their consideration of the proposed development. As such, even if the appellant does not feel that he had sufficient opportunity to challenge Council's revised description when the application was validated, this did not have any material bearing on the outcome.
10. The Officer Report acknowledged that representations in support of the application out-numbered representations raising objections. Therefore, this information was available to the Council when the application was determined. The Council subsequently responded within a reasonable timescale to queries raised by the appellant regarding representations forwarded with the appeal questionnaire. I am satisfied that both the Council and I have been able to give appropriate consideration to matters raised by interested parties.
11. Lack of progress on the 2017 application for variation of a section 106 agreement does not have a direct bearing on the need for the appeal, for the reasons explained in the appeal decision.
12. With regard to ecology, the Officer Report included some information about the proposal's effect on Habitats Sites, including details of the strategic approach to mitigation by means of a tariff-based financial contribution. However, no relevant development plan policies or supplementary planning documents were identified in the Officer Report and the effect on Habitats Sites was not highlighted on the Council's appeal questionnaire.
13. The appellant's evidence indicates that the previous planning application for a similar scheme was submitted by a different agent. Therefore, the Council's reliance on an ecological consultation response which may not have been readily available to the current agent, and on rather limited evidence explaining the implications of the Habitats Regulations, were factors somewhat prejudicial to the appellant's ability to address such matters.

14. However, since the effect on Habitats Sites was not raised as a reason for refusal, the shortfall in evidence on this point did not have a bearing on whether the appeal process was necessary. Nor, given the outcome of the appeal, is there any evidence that any wasted or abortive costs were incurred as a result.

Conclusion

15. For the reasons set out above, I do not find that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated. Therefore, the application for costs is refused.

Jane Smith

INSPECTOR