



Costs Decision

Hearing held on 12 October 2023

Site visit made on 12 October 2023

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th November 2023

Costs application in relation to Appeal Ref: APP/W2845/W/23/3318366 Land East of Brington Road, Flore

- 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 Barwood Homes Limited for a partial award of costs against West Northamptonshire Council.
 - The appeal was against the refusal of planning permission for an outline planning application of up to 45 dwellings, to include 40% affordable dwellings (7 one bed homes, 5 two bed homes and 6 three bed homes), infrastructure and open space. (All matters reserved other than access).
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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. Owing to the scale of the proposed development, a Section 106 Agreement was required. This document was drafted, albeit not completed in advance of the hearing taking place. It is understood that the Council, at a late stage and close to the hearing taking place; made comments and raised questions regarding the drafting of the Agreement.
4. The timing of such correspondence was inopportune, particularly as the hearing had been postponed from a previous date. However, the Council was required to ensure that the Legal Agreement met its requirements in being enforceable; provided the required mitigation for the development; and ensured that the development was policy compliant.
5. The appellant therefore instructed their solicitor to attend the hearing, in order to participate in the section of the discussion pertaining to the legal agreement. I appreciate that this required the solicitor to be present for the entire hearing as it was not certain as to the time that discussions regarding the legal agreement would commence.
6. However, it is the choice of the relevant parties as to which professional representatives attend a hearing, if indeed any. Therefore, it was the choice of the appellant that their solicitor attended the hearing, rather than it being a requirement of the proceedings. This is the case even though the appellant's

solicitor was instructed to attend the hearing at relatively short notice and only following the written comments of the Council being received.

7. Had the comments from the Council been received by the appellant at an earlier juncture, there was a likelihood that these matters could have been resolved in advance of the hearing commencing. However, this did not necessitate the appellant's solicitor to attend the hearing to conclude matters, given the format of a hearing.
8. Therefore, although there was a delay in the Council providing comments, I do not believe that this caused wasted or unnecessary expense on the part of the appellant. In result, I am unable to conclude that the Council has acted unreasonably in this regard.
9. In addition, any additional drafting of the agreement would have needed to be undertaken irrespective of the timing of the comments. This means that the Council's actions did not result in wasted, or unnecessary expense.

Conclusion

10. I therefore conclude that the Council has not acted unreasonably and therefore there has not been any wasted or unnecessary expenses, as described in the PPG. Accordingly, an award of costs is not justified.

Benjamin Clarke

INSPECTOR