



Costs Decision

Site visit made on 14 November 2023

by G Dring BA (Hons) MA MRTPI MAUDE

an Inspector appointed by the Secretary of State

Decision date: 26 January 2024

Costs application in relation to Appeal Ref: APP/J3720/W/23/3325887 Land west of Bull Ring Farm Road, Harbury, Warwickshire CV33 9HJ

- 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 Build1 Ltd for a full award of costs against Stratford-on-Avon District Council.
 - The appeal was against the refusal of outline application with all matters reserved, with the exception of access and layout, for up to 8no. self-build/custom-build dwellings.
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Decision

1. The application for a full award of costs is refused but a partial award is allowed.

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 includes examples of unreasonable behaviour by planning authorities that may lead to a substantive award of costs. Amongst other things, this can include, 'persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable'.
4. A previous scheme for 13 dwellings on a wider site area encompassing the appeal site was refused by the Council previously and subsequently was dismissed at appeal. However, in that appeal decision the Inspector found that the proposal would have a neutral effect on the adjacent Harbury Conservation Area (CA).
5. The effect of the proposal on the setting of the adjacent CA was included in the Council's reasons for refusal. The applicant considers that as a result of this, they had to commission additional evidence on heritage to respond to the Council's concerns.
6. I accept that each application must be considered on its individual merits. However, the appeal proposal is located on a reduced site area and proposes less development in terms of unit numbers than that refused previously. Whilst the appeal proposal is different to that of the previous scheme, they can be compared in terms of the proximity to the CA and the set back from the eastern boundary.

7. However, although the Council clearly state that the previous appeal decision has been taken into account, I do not consider that the delegated report clearly substantiates why the Council's assessment results in an opinion that differs to that of the previous appeal decision or why the appeal proposal is so substantially different that it would result in harm to the CA, when comparing the two. The height of development is not for consideration under the application, only the layout.
8. The Council's Conservation Officer was not consulted on the appeal proposal, but this is not unreasonable, even given they were consulted on the previous application.
9. Nonetheless, I find that it was unreasonable for the Council to raise objection on conservation grounds which an Inspector had previously indicated to be acceptable. The reason for refusal relating to the effect on the CA did lead to the applicant instructing that a further Heritage Appeal Statement was prepared in support of the appeal, which amounted to unnecessary expense.

Conclusion

10. In light of the above, I conclude that unreasonable behaviour has been demonstrated and that a partial award of costs is justified as the applicant has incurred unnecessary expense in addressing heritage issues.

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 Stratford-on-Avon District Council shall pay to Build1 Ltd the costs of the appeal proceedings described in the heading of this decision limited only to that relating to addressing the reason for refusal relating to the effect on the setting of the conservation area; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Stratford-on-Avon 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.

G Dring

INSPECTOR