



Costs Decision

Site visit made on 9 November 2023

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2024

**Costs application in relation to Appeal Ref: APP/Z1510/W/22/3312853
Stonecroft, 2 Leywood Close, Braintree CM7 3NP**

- 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 J Sample (Leywood Properties Limited) for a full award of costs against Braintree District Council.
 - The appeal was against the refusal of planning permission for demolition of care home buildings and erection of 3 x 4 bed detached and 2 x 2 bed semi-detached dwellinghouses (total 5 units), together with related infrastructure and modified 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. There was a site meeting on 26 May 2022. It is not clear to me that, during this meeting, the Council gave the applicant the impression that their later suite of amendments would be sufficient to overcome its objections or that the Council had not expressed any concern with the overall quantum of development proposed. I have no reason to conclude that the Council would have refused to assess amended plans for a development which showed a reduction in the number of dwellings, even if this had necessitated a change to the development's description and potentially further consultation. I see no reason to doubt that the Council was making a genuine attempt to overcome planning objections to the scheme.
4. Following the applicant's submission of amended plans, the Council explained why it considered those plans had failed to resolve its concerns. The Council also offered the applicant the opportunity to withdraw the application and pursue pre-application discussions which had not taken place previously. Overall, the Council's conduct was not contrary to the positive and proactive behaviours required by Policy SP1 of the Braintree District Local Plan (LP) or that advised within the National Planning Policy Framework (the Framework) including at paragraph 38.
5. Unlike the Council, I have concluded that the effects of the proposed development upon the character and appearance of the area and upon the living conditions of existing and future occupiers would be acceptable. Nevertheless, these assessments are matters of judgement. In my view the Council exercised its planning judgement in a reasonable way. Furthermore, the Council has clearly set out the detail of its objections and has not made vague or generalised assertions.

6. Since the Council refused planning permission for the development the subject of the appeal, an alternative proposal for four houses has been approved¹. Although there are some similarities between the two schemes, the latter proposal includes amendments relevant to some of the Council's key concerns with the appeal scheme. These amendments include a reduction in the quantum of development, amended landscaping and public realm adjacent to Nos 6, 8 and 10 Leywood Close and revised parking spaces. Given that there are material differences between the two schemes the Council has not acted in an inconsistent manner.
7. With planning permission having been granted for the four house scheme, the Council has accepted a proposal with a greater quantum of development than the three houses which it indicated would be likely to be more appropriate during the exchanges held on the appeal scheme. However, in suggesting a scheme of three houses, the Council was providing the applicant with its informal view of an appropriate way to redevelop the site. The applicant has later been able to demonstrate to the Council that four houses can be successfully accommodated but this does not mean that the Council, had up to that point, been unreasonably dictatorial.
8. Given its relevance to the appeal, the Council should have alerted me to the planning permission it had granted for four houses. However, the applicant raised the matter and both parties had the opportunity to make submissions. This would have been the case had the Council raised the matter first. Therefore, this omission by the Council has not led to the applicant incurring unnecessary or wasted expense in the appeal process.
9. In circumstances where the Council considered that the proposal was contrary to the development plan and cannot demonstrate a five year supply of deliverable housing sites, the Council was correct to assess the planning application with regard to paragraph 11(d) of the Framework rather than paragraph 11(c). In both its officer report and later in its appeal statement, the Council has been consistent in its observations on the dimensions of some parking spaces proposed and consistent with its commentary upon Policy LPP1 of the LP. Therefore, the Council has not introduced materially different objections during the appeal.
10. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

H Jones

INSPECTOR

¹ Planning application reference 23/01415/FUL