



Costs Decision

Hearing held on 1 November 2023

Site visit made on 31 October 2023

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th January 2024

Costs application A in relation to Appeal Ref: APP/P0240/W/23/3326233 Land at Stoke Road, Linslade LU7 2SR

- 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 Central Bedfordshire Council for a full award of costs against Mr Kevin Smith.
- The appeal was against the refusal of the Council to grant subject to conditions of planning permission for an artisan live/ work community including 20 residential units with commercial elements, associated communal facilities and parking.

Costs application B in relation to Appeal Ref: APP/P0240/W/23/3326233 Land at Stoke Road, Linslade LU7 2SR

- 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 Kevin Smith for a full award of costs against Central Bedfordshire Council.
 - The appeal was against the refusal of the Council to grant subject to conditions of planning permission for an artisan live/ work community including 20 residential units with commercial elements, associated communal facilities and parking.
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Decision

1. Application A for an award of costs by the Council is allowed in the terms set out below.
2. Application B for an award of costs by the Appellant is refused.

Preliminary Matters

3. 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. All parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met.
4. Unreasonable behaviour in the context of applications for an award of costs may either be procedural relating to the process or substantive relating to the issues arising from the merits of the appeal.

Application A

5. Paragraph 053 of the PPG states that the right of appeal should be exercised in a reasonable manner and an appellant is at risk of an award of costs being

made against them if the appeal or ground of appeal had no reasonable prospect of succeeding.

6. The PPG goes on to provide examples of unreasonable behaviour by appellants. One such example is where the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.
7. As seen from my decision, the Council had reasonable concerns about the proposed development which justified its decision in respect of all nine of the reasons for refusal listed on the decision notice. This has been based on the evidence provided and the Council has substantiated its position at appeal.
8. I note that the application was submitted in outline with all matters reserved for future consideration. Nonetheless, the outline is the planning permission and therefore matters that go to the heart of the application must be addressed at this stage. In this case this included the impact upon the Green Belt, biodiversity, impact on a designated habitat site, flood risk and any necessary planning obligations. These are not matters that can be deferred to reserved matters stage.
9. Whilst I understand that the intention was to establish the "principle of development" the onus is on the appellant, as the one spearheading the scheme, to present full and detailed information to meaningfully engage with the Council and key stakeholders and for the Council to make an informed decision.
10. I concur with the Council that in this regard that the appellant's case was at best skeletal. In my view the appellant would have been aware of the additional information required from the consultation responses and the documents produced by the Council to address the "gulf of disagreement" that existed between the two parties prior to the Hearing.
11. Of particular note, and as mentioned in the hearing, is the failure of Mr Smith to address the concerns of the Council in relation to the effect of additional residential development upon the Chiltern Beechwoods Special Area of Conservation (SAC). Mr Smith would have been aware of the proposals conflict with adopted policies and the formal objection of Natural England.
12. Despite this, he proceeded to appeal the Council's decision without providing any assessment of the impact and mitigation measures capable of protecting the integrity of the SAC. In doing so, Mr Smith has submitted an appeal without any substantive supporting documentation or scientific information demonstrating that the proposal would not adversely affect the SAC or that harms could be mitigated.
13. The same could also be said in respect of the proposals impact in relation to flood risk, biodiversity and planning obligations required to make the scheme acceptable in planning terms.
14. In respect of the planning obligations, a generic draft was provided but there is nothing before me to indicate that the appellant made any meaningful attempts to engage with the Council in order to progress it. In terms of the appellant's case Mr Smith firstly contended that the proposed development would not

significantly impact on local infrastructure; then in the Statement of Common Ground he questioned whether the planning obligations would meet the relevant statutory tests and finally at the hearing he advised that such obligations would make the scheme unviable. The position adopted by the appellant appeared to shift throughout the course of the appeal without any credible evidence to substantiate his changing position. Unfortunately, this change in tact appeared to be a common theme through the appeal proceedings and caused the Council to review and update its case according to the stance adopted by the appellant. In my eyes this also amounts to unreasonable behaviour by the appellant.

15. It is evident from the written and oral submissions that Mr Smith has been involved in the development industry for a considerable period of time. He has held the site for a number of years and promoted it through the local plan and previously progressed a planning application for redevelopment of the site. Given his experience, therefore, the Green Belt designation, the relevant policy tests and the documents needed to support such a proposal would not be unknown to him.
16. In my judgement, the appeal had no reasonable prospect of succeeding. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs in favour of the Council is therefore warranted.

Application B

17. The right of an appeal is a statutory right. However, it should be exercised in a reasonable manner.
18. I acknowledge that the appellant sought to deliver a “innovative, highly unorthodox and ground breaking” scheme. However, based on the information before me there is nothing substantive to indicate that the Council failed to give due regard to the concept underpinning the scheme. The Council produced a cogent report and the reasons for refusal set out in the decision notice are complete and relevant to the application. It also clearly states the policies of the Central Bedfordshire Local Plan that the proposal would be in conflict with. As such, I do not agree that the Council acted unreasonably by refusing the application.
19. I am not for one minute suggesting that the planning application was made on a “whim” or is a “hare brained idea”, indeed the concept and trying to push boundaries should be commended. However, as set out earlier the onus is on the appellant to provide all the necessary information to meaningfully engage with the Council, even if submitted in outline form.
20. The conduct of the Council during the application process is not a matter for me in consideration of this decision. The Council elected to instruct a planning consultant to present their case, which is not an uncommon occurrence for hearings. Whilst the case officer was not present for much of the hearing, this did not appear to undermine the proceedings or prejudice the appellant at the event.
21. I therefore find that the Council has not acted unreasonably resulting in unnecessary or wasted expense, as described in the PPG. For this reason, and

having had regard to all other matters raised, an award of costs against the Council is not justified.

Costs Order

22. 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 Mr Kevin Smith shall pay to Central Bedfordshire Council, the costs of the appeal proceedings described in the heading of this decision such costs to be assessed in the Senior Courts Costs Office if not agreed.
23. Central Bedfordshire Council is now invited to submit to Mr Kevin Smith to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

B Thandi

INSPECTOR