



Costs Decision

Hearing held on 11 & 13 July 2023

Site visit made on 13 July 2023

by D J Board BSc(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd February 2024

Costs application in relation to Appeal A Ref: APP/W1525/W/23/3316812 Land opposite Leedanton Farm, Cumming Road, Downham, BILLERICAY, CM11 1LW

- 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 Patrick David Kerrigan for a partial award of costs against Chelmsford City Council.
 - The appeal was against the refusal of planning permission for outline planning application for bungalow and detached garage for residential use with access.
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Costs application in relation to Appeal B Ref: APP/W1525/W/23/3316813 Land opposite Leedanton Farm, Cumming Road, Downham, BILLERICAY, CM11 1LW

- 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 Patrick David Kerrigan for a partial award of costs against Chelmsford City Council.
 - The appeal was against the refusal of planning permission for 'the use of land for the stationing of caravans for residential purposes together with the formation of hardstanding and day room ancillary to that use'.
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Decisions

1. Appeal A - The application for an award of costs is refused.
2. Appeal B - The application for an award of costs is refused.

The submissions for Patrick David Kerrigan

3. The costs application was made orally at the hearing. The applicant asserts for Appeal A that development has been prevented or delayed which should clearly have been permitted and that the Council has failed to support its reasons for refusing planning permission.
4. In the case of Appeal B the applicant asserts that the Council did not treat the submission as an application for a Gypsy and Traveller pitch when it should have. As such it was not assessed properly. In addition he considers that this was compounded by a failure to properly consider the effect of a recent judgement¹ on their position and as such they acted contrary to and did not

¹ Appendix B9 to the Appellant's Statement of Case

follow well established case law. In addition to this it is submitted that planning permission could have been granted if the Council had considered conditions properly for temporary or personal planning permissions.

5. In Appeal B the applicant also considers that development has been prevented or delayed which should clearly have been permitted and that the Council has failed to support its reasons for refusing planning permission and that on the issue of location there was no reference to appropriate national policy from the Planning Policy for Traveller Sites (PPTS).

The response by Chelmsford City Council

6. The response was made orally at the hearing with a copy of the submission sent in after the event in writing. In both cases the Council does not accept that it has behaved unreasonably and stands by the reasons for refusal for both cases which are grounded in the policy within the development plan.

Reasons

7. 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.

Appeal A

8. The policies that govern the issue of whether this scheme would be not inappropriate development in the Green Belt relate to matters of judgement as to what would represent limited infilling in a village. More specifically this is also the case for the Council's own policy DM9 regarding infilling in the Green Belt. Indeed the reasoned justification for the policy is clear that each site will be assessed on a site by site basis and that a judgement would have to be made.
9. The second point made related to the application of policies for consideration of the location of the appeal site. Again the reasoned justification for DM9 is clear that whether a site would be located in a village will be assessed on a site by site basis. I appreciate that the applicant is also concerned about the Council's approach to the location of the scheme in relation to services. This is also a matter of judgement, and it does not follow, as suggested in the oral submissions, that my finding in favour of the applicant necessarily means the Council's approach was unreasonable.
10. In this case the Council provided evidence to support its position on both of these issues within its statement of case and in oral evidence at the Hearing. The relevant development plan policies were provided and referred to in support of the Council's decision. The Council did substantiate its case with reference to relevant policy considerations.
11. Therefore, overall, I do not consider that the Council's approach to these matters, which are ultimately a matter for the decision maker, is inherently unreasonable.

Appeal B

12. There is disagreement about how the Council considered the initial application and the resultant effects of this on the appeal. The Council's rebuttal to the

costs application suggests that the application was deliberately vague. The statement submitted with the planning application² makes a specific reference to seeking planning permission for a residential pitch to facilitate a gypsy lifestyle. It also makes reference to the layout approach taken specifically for designing Gypsy and Traveller sites and that there would be children on site. I do not agree that the planning statement was deliberately vague on the point of being for a Gypsy and Traveller pitch. This is not addressed in the officers report on the case, indeed there is no reference to policy DM3 in consideration of the scheme.

13. The planning statement also refers to policies that apply to infilling in the Green Belt. In addition to this it does not explicitly refer to a case for other considerations that could amount to very special circumstances. I understand the Council's point that issues did appear to be conflated with the same statement seeking to justify the scheme based on the application of policy DM9 rather than through the very special circumstances route, the argument pursued at the Hearing.
14. I am mindful that the PPG states that the behaviour and actions at the time of the planning application can be taken into account in consideration of whether or not costs should be awarded. Therefore, I have a degree of sympathy for the applicant in that it is clear from the evidence before me that the Council did not consider fully the information in the planning statement or apply policy DM3 in its consideration of the application.
15. However, I consider that the additional work carried out by the applicant for the appeal was necessary to fully examine the very special circumstance arguments associated with scheme. In addition to this I am mindful that this same information was not presented to the Council at application stage and that the planning statement was not clear by also referring to policy DM9. Therefore, whilst I have found in favour of the applicant in terms of the appeal decision, based on the information before me there is no substantive evidence that demonstrates that the Council have behaved unreasonably in relation to their consideration of the planning application.
16. The applicant is concerned about the Council not properly considering the PPTS on matter of location, the Lisa Smith judgement³ or whether a temporary permission would have been appropriate. However, the detailed arguments put to me at the Hearing were not all within the planning application information. Further, I am not convinced that the Council approaching this differently would actually have changed the outcome. Specifically that there was a lack of information on other considerations that would amount to very special circumstances. The Council indicated at the Hearing that even if it had this information, it would not have supported this scheme in the Green Belt. This is a matter of judgement and so I am not convinced an appeal could have been avoided as the applicant submits.
17. Therefore, overall, I do not consider that the Council's approach to these matters, was inherently unreasonable.

² Planning Statement dated 13 May 2022

³ Appendix B9 to the Statement of Case

Conclusion

Appeal A

18. I therefore find that unreasonable behaviour resulting in unnecessary expense as described in the PPG, has not been demonstrated. For the reasons given above I refuse the application for a partial award of costs.

Appeal B

19. I therefore find that unreasonable behaviour resulting in unnecessary expense as described in the PPG, has not been demonstrated. For the reasons given above I refuse the application for a partial award of costs.

D J Board

INSPECTOR