The Planning Inspectorate

Costs Decision

Site visit made on 12 March 2024

by P Eggleton BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 April 2024

Costs application in relation to Appeal Ref: APP/V0510/W/23/3330986
Crow Hall Farm, Northfield Road, Soham, Cambridgeshire CB7 5UF

- 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 East Cambridgeshire District Council for a full award of costs against Mr Alan White.
- The appeal was made against the refusal of planning permission for a single storey, four bed, detached dwelling.

Decision

1. The application for an award of costs is refused.

Reasons

2. *Planning Practice Guidance* advises that costs may be awarded where a party has behaved unreasonably; and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

3. It is alleged that the appellant acted unreasonably by failing to acknowledge the council's five year housing land supply position; the changes to the weight that should be afforded to the council's main policy relating to the location of development; and by assigning too great a weight to the expired planning permission for a similar development on the same plot.

4. The council's decision was made before the Inspector's Report on the Examination of the East Cambridgeshire Local Plan – Single Issue Review (of its 2015 Local Plan) which was published on 9 October 2023. The appeal was submitted following the publication of the Inspector's report but before it was agreed by the council and the East Cambridgeshire Local Plan 2015 (as amended 2023) was adopted on 19 October 2023. Policy GROWTH 2 had been found in a previous appeal (APP/V0510/W/21/3282449) to be out-of-date due to the situation with regard to policy GROWTH 1, despite positive housing supply figures. Although the council took a different view to that Inspector due to the different specific locational characteristics of the cases, at the time of the submission of the appeal, as the revised Local Plan had not been adopted, it was reasonable for the appellant to put forward an argument for consideration that the development plan position had not changed from the previous decision on the site, despite the updated Five Year Land Supply document of 12 August

2022.

5. The council may have expected the appellant to anticipate the adoption of the revised Local Plan but it was not unreasonable for the appellant to rely on the development plan as it stood on the date of the appeal submission. The Local Plan Inspector's decision should have been taken into account by the appellant as the emerging revised Local Plan document was nearing the completion of the process towards adoption. Although not yet part of the development plan, it represented a material consideration that considerable weight should have been afforded to. The lack of acknowledgement of this changing situation, despite the short period between the report and the appeal statement submission, could be considered to represent unreasonable behaviour.

6. The appellant could have withdrawn the appeal following the change in circumstances of the 19 October 2023 when the revised Local Plan was adopted. However, the appellant considered that other matters should be weighed in the balance. The approved but expired planning permission was a particularly relevant consideration. The weight to be afforded to this consideration is a matter for the decision maker. It was not however unreasonable for the appellant to have that matter, along with a number of others, considered against the development plan conflict.

7. In these circumstances, even if the appellant had acknowledged the changed weight that should have been afforded to the emerging revised Local Plan, it was inevitable that the appeal would continue and the council would have to set out the changes that resulted from the adoption of the revised Local Plan given the timing of its adoption after the appeal submission.

8. The appellant was entitled to have the weight afforded to the council's previous decision considered in the planning balance. Although I have reached the same overall conclusion as the council, that the material considerations are not sufficient to outweigh the conflict with the newly revised development plan, this was not inevitable.

9. Overall, despite the dates of the Inspector's Examination report, the submission of the appeal and the adoption of the revised Local Plan being very close together, the appellant's failure to acknowledge the Inspector's Examination report can be considered to represent unreasonable behaviour. However, as the revised Local Plan had not been adopted at the time the appeal was lodged and the statement submitted, it was not unreasonable for the appellant to pursue the appeal or continue with it. It was inevitable that the council would need to address the changed Local Plan status. Whilst the actions of the appellant could be considered as unreasonable behaviour as set out in the *Guidance*, the council would have had to produce their statement in any event. It would not have been significantly different had the appellant acknowledged the Inspector's Examination report. I therefore find that any unreasonable behaviour by the appellant did not result in unnecessary and wasted expense by the council. An award of costs is not therefore justified.

Peter Eggleton

INSPECTOR