



Costs Decision

Site visit made on 15 May 2024

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2024

Costs application in relation to Appeal Ref: APP/Y3940/W/23/3325638 Land adjacent to Station Road Bridge, Station Road, Christian Malford, Wiltshire

- 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 & Mrs Gilding/Gilding/Gingel & Coton for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for the erection of up to 6 affordable housing units.
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Decision

1. The application for an award of costs is allowed, in part, in the terms set out below.

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 appeal followed the refusal of a second planning application at the site. The second application was materially different in terms of the development proposed to the first one, but the reasons for refusal were almost identical.
4. Given that the Council were not satisfied that the proposal would provide affordable housing in compliance with Core Policy 44 of the Wiltshire Core Strategy 2015, the overall policy framework for the two applications would have been comparable. In other matters, a variety of technical reports were submitted. Nevertheless, the Council remained unconvinced by their conclusions that harm would not arise. On this basis, similar reasons for refusal would, therefore, be expected.
5. The Council's officer report and appeal submissions make clear that the additional evidence provided by the appellants, and the correct policy framework were considered. It has, therefore, substantiated the reasons for refusal and no unreasonable behaviour has occurred in that regard.
6. However, following the refusal of the application, the appellants sought to engage with the Council in the drafting of a planning obligation that would secure the affordable housing proposed, by agreement under S106 of the Town and Country Planning Act 1990 as amended (the 1990 Act). In correspondence from 31 July 2023, the Council first asked if there was a draft agreement available. Following an enquiry as to whether heads of terms were sufficient at

that stage, the Council reiterated that there was no draft deed and that comments would be provided on any draft within its appeal submissions.

7. While it is desirable for the parties to work together to agree planning obligations, it has not been shown that the Council were unreasonable in deferring any comment on the document until the appeal process was officially started by the Planning Inspectorate. However, the correspondence until then clearly provided an expectation that the appellants should produce the first draft, rather than simply heads of terms.
8. Once the appeal process was started, the Council fully engaged with the appellants' solicitors in a timely and responsive way. However, the Council's starting point was to produce its own agreement with the obligations set out in different terms. At this stage, the advice from the Council was clear: That the Council's drafting had evolved over the years and the starting basis for any agreement is to use the Council's standard precedent (my emphasis).
9. Until that point, there had been no suggestion that there was a standard draft available. Moreover, the correspondence all suggested that the appellants should produce a first draft for review by the Council. The appellants' decision to go ahead with that, ultimately abortive, work was clearly a response to the advice that had been given by the Council.
10. It may well be that where an appellant was proposing obligations in non-standard terms, as appears to have been the case here, it is reasonable for the first draft to be provided by that appellant. However, the evidence suggests that the Council was not prepared to accept such an alternative. If this is the approach of the Council, as set out in my emphasised words above, then that clearly should have been communicated to the appellants earlier. Fundamentally, it should have been done before the appellants invested in the abortive work of producing the first draft.
11. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the appellants' production of the first draft of the Section 106 agreement, and a partial award of costs is therefore warranted.

Costs Order

12. 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 Wiltshire Council shall pay to Mr & Mrs Gilding/Gilding/Gingel & Coton, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in Mr & Mrs Gilding/Gilding/Gingel & Coton producing the first draft of a planning obligation pursuant to Section 106 of the 1990 Act; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Wiltshire 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.

M Bale INSPECTOR