



Costs Decision

Hearing Held on 9 May 2024

Site visit made on 9 May 2024

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2024

Costs application in relation to Appeal Ref: APP/P0240/W/23/3324532 Land North of Stockbridge Road, Clifton, Bedfordshire SG17 5HA

- 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 A Cooper and Abbeymill Homes for a full award of costs against Central Bedfordshire Council.
 - The hearing was in connection with an appeal against the refusal of the Council to grant planning permission for the erection of 16 dwellings, with new access off Stockbridge Road, together with garaging, parking and landscaping, and proposed new area of public open space and all enabling works.
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Decision

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

The submissions for Mr & Mrs Cooper and Abbeymill Homes

2. The application was submitted in writing, supplemented orally at the Hearing and the content will be familiar to the parties. As such, the following is a brief summary of the main grounds of the application.
3. The Council engaged in inconsistent decision making having allowed a very similar proposal for 29 dwellings to the rear of 210 to 228 Shefford Road in July 2022. The weight given to the benefits of the appeal scheme by officers was skewed and did not compare to the benefits given to the Shefford Road scheme. In addition, the Council previously lost an appeal for a directly comparable scheme off Broad Street. The Planning Practice Guidance (PPG) states that a Council will be at risk of an award if it behaves unreasonably in respect of the substance matter of an appeal and that is the case here in relation to inconsistent decision making.
4. Secondly, the Council failed to engage properly with the appellant in agreeing a Statement of Common Ground. The appellant issued a draft to the Council and chased several times without response. The absence of a SoCG was one of the reasons the Inspector postponed the Hearing which led to delay. Despite the postponement, the Council did not use the time to engage with the appellant and a further 3 months went by without a response, despite being chased numerous times. The PPG notes that failure to agree a SoCG in a timely manner represents unreasonable behaviour that may result in an award of costs. The clear failure of the Council to engage in this matter is such that an award should be made on procedural grounds.

The response by Central Bedfordshire Council

5. As above, the Council's response was submitted in writing and orally at the Hearing and the following is a summary of the main points.
6. The site at Shefford is clearly different from that at the appeal site because it is not located in an Important Countryside Gap, with reference to policy SP5 of the Central Bedfordshire Local Plan, which seeks to stop coalescence between settlements. The site at Shefford did not have the same constraints in that respect.
7. In terms of Broad Street, each site is different and has its own characteristics. The balance of the weight to be given to different matters is not comparable. It is considered that the Council did not act unreasonably in relation to this proposal, particularly having regard to the previous Inspector's decision in relation to the site.
8. The Council refutes the allegation that it failed to engage over the s106. The Council had to work on 2 documents, the general SoCG and the Housing SoCG which took a lot of officer input and over 11 iterations to reach a final document. A great level of work was put into the documents which reached the Inspector prior to the Hearing.
9. The reason for the adjournment was due to the appellant submitting a large amount of new evidence relating to housing land supply, late in proceedings which made it hard to engage. In any event, there is no evidence that any extra costs were incurred because the matter still needed to be considered at the Hearing.

Reasons

10. Paragraph 049 of the PPG in relation to costs identifies that the failure to determine applications in a consistent manner may give rise to an award. I can deal with the substantive arguments briefly because any objective analysis would readily identify that the other schemes referred to by the applicant are not directly comparable to the appeal scheme in the current case.
11. The site in Shefford was not located within an Important Countryside Gap and not situated on land in the transition between two villages. Those matters formed the basis of the Council's refusal of the appeal application and the constraints were absent in the Shefford case. The Broad Street appeal scheme was situated on land between Clifton and Henlow where policy SP5 applied. However, the Inspector in that case clearly drew comparison between the gap between the settlements at that point and the more constrained gap along key highways, including Stockbridge Road. The nature and size of the scheme was also different. Accordingly, it was not comparable and the Council did not behave inconsistently to the findings in that appeal.
12. More pertinent was the previous appeal in relation to the appeal site. The Inspector in that case set out clear reasons for refusal and noted that he would have dismissed the appeal, even in a situation where the 'tilted balance' applied. In light of that there can be no allegation of inconsistent behaviour from the Council.
13. I find it difficult to draw a meaningful conclusion on the procedural matter regarding cooperation on the SoCG. Correspondence does appear to show that

the applicant tried to engage with the Council and that the Council was slow to respond on occasion.

14. However, the principal reason why I deemed it necessary to postpone the initial date of the Hearing was due to the appellants submitting a large volume of information relating to housing land supply late in proceedings. The timing and volume of the submissions undoubtedly led to the delay in proceedings. The result was that the number of disputed 'deliverable' housing sites grew substantially and the Council then needed to respond to that information both in its evidence for the Hearing and the SoCG. I am not entirely satisfied that information could not have been submitted sooner, nor is it clear that the additional sites were added purely in respect to changes in the Council's published housing trajectory.
15. Overall, it is hard to apportion blame one way or the other. There appears to be an element of culpability on both parties and it came across as a classic tit for tat episode where both parties failed to work together cooperatively and that led to delay in proceedings. However, I cannot lay that solely at the Council's door from the information before me and found the behaviour of both parties equally frustrating.
16. In any event, the information submitted by the appellant in respect of housing supply had to be considered and it is not clear how any additional expense was incurred by the appellant on account of the alleged failure to cooperate.
17. In view of the above, there are no grounds for an award of costs in respect of the Council's behaviour, either procedurally or substantively and I shall refuse the application.

Chris Preston

INSPECTOR