



Costs Decision

Site visit made on 16 July 2024

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2024

Costs application in relation to Appeal Ref: APP/K0425/W/23/3330546 Foxfields, Bryants Bottom Road, Bryants Bottom, Buckinghamshire HP16 0JT

- 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 Buckinghamshire Council - West Area (Wycombe) for a full award of costs against Millen Homes Limited.
 - The appeal was against the refusal of planning permission for the development of 2 detached bungalows on land formally part of Franconia, Bryants Bottom Road.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance 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 applicant's costs claim was made in writing. In summary, they consider that the respondent has pursued an appeal that has no reasonable prospect of succeeding and that insufficient supporting evidence has been provided to address the reasons for refusal. The respondent has provided a written rebuttal which counters the application that has been made.
4. The appeal site is within the Green Belt. The respondent has advanced their case on the basis that the proposal is not inappropriate development in the Green Belt by virtue of paragraph 154g) of the National Planning Policy Framework (the Framework), as they consider the appeal site to be previously developed land. However, under the definition set out in Annex 2 of the Framework, previously developed land is land which is, or was, occupied by a permanent structure, including the curtilage of the developed land. The applicant set out clearly in their Officer Report that the appeal site was not granted as curtilage within the original permission for Franconia. The respondent has not contested this point or sought to demonstrate otherwise.
5. Therefore, whilst the respondent has provided some evidence to support their position that a previous occupier of Franconia used the appeal site as garden land, this does not address the requirement that to be previously developed land it must be land within the curtilage of that dwelling. Without the respondent being able to provide evidence to suggest that the applicant was wrong in that respect, there was no prospect that the proposed development could be found to fall within the exception under paragraph 154g). This is irrespective of whatever was found in terms of whether there would be a

greater impact on the openness of the Green Belt than the existing development or not.

6. As inappropriate development in the Green Belt, development plan policies and the Framework both advise that such development should not be approved except in very special circumstances. The respondent makes reference to the benefits of the provision of two new houses but offers no considerations specific to the case that might reasonably have been considered to represent very special circumstances.
7. The general pattern of the respondent's appeal submissions on the other reasons for refusal is that assertions are made but no evidence is provided to back these up. For example, it is stated that the site does not show signs of any protected species, but there is no evidence of an assessment being made by an appropriately qualified person. Likewise, reference is made to it having been established that the ground is suitable for infiltration and therefore SUDs, but no details of the testing that has been carried out have been provided. It is said that biodiversity net gain would be addressed by off-site offsetting with the necessary planning obligation submitted to secure this, but no obligation has been provided. The Arboricultural Impact Assessment that has been referred to was not provided as part of the appeal submissions.
8. For the reasons I have set out in my decision, all of these matters were reasonable for the applicant to raise and therefore needed to be addressed. It was not sufficient to make statements on these technical and specialist issues without providing evidence to substantiate them. Without such evidence the appeal had no reasonable prospect of success on those grounds, and the onus was on the respondent to provide this evidence. I have considered the full representations made by the respondent in their costs rebuttal, however where these refer to relevant planning considerations they are addressed in my decision and do not assist with the respondent's costs defence.
9. Although the respondent refers to communication issues with the applicant, they were aware of the matters they would need to address before they made the appeal. Therefore, they were in a position to make an informed judgement as to whether they could put forward a case that would have a reasonable chance of success at the point that they decided to submit the appeal.
10. In conclusion, the respondent did not set out a case to fully counter that of the applicant that the proposed development would be inappropriate development in the Green Belt. They also did not set out any other considerations that could reasonably have been judged to be very special circumstances. Furthermore, they made statements on a number of matters which were not substantiated by any evidence. Collectively, this means that there was no reasonable prospect of the appeal being successful and to pursue it represents unreasonable behaviour that has led to the applicant incurring unnecessary and wasted expense in having to defend the appeal. Therefore, a full award of costs is warranted.

Costs Order

11. 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 Millen Homes Limited shall pay to Buckinghamshire Council - West Area

(Wycombe), 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.

12. The applicant is now invited to submit to Millen Homes Limited, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Graham Wraight

INSPECTOR