
Costs Decision

Site visit made on 19 September 2024

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2024

Costs application in relation to Appeal Ref: APP/Q3115/W/24/3337360

10 Queens Avenue, Wallingford, Oxfordshire OX10 0NB

- 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 G Bertram (Gareth Bertram Ltd) for an award of costs against South Oxfordshire District Council.
 - The appeal was made against the refusal of outline planning permission for works of demolition and the erection of nine detached and semi-detached two-storey dwellings with access, parking and amenity space.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and such behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. The applicant's basis for claiming partial costs relates to the Council's first reason for refusal concerning the principle of the proposed development. The claim of unreasonable behaviour concerns the alleged failure by the Council to have proper regard to its own development plan policy, specifically Policy H1 of the South Oxfordshire Local Plan 2011-2035 (2020).
 4. Policy H1 is one of the policies cited in support of the Council's first reason for refusal. It concerns the location of new residential development and it sets out the circumstances in which such development will be permitted on sites not allocated in the development plan, as in the case of the appeal site.
 5. The Council takes the view that the site fails to meet any of the provisions of Policy H1. In particular, the first reason for refusal states that 'the site consists of land which falls outside of Wallingford's built area' and 'the development would extend beyond the built limit of Wallingford'. This relates to 3.iii) of Policy H1, which indicates that development on unallocated sites will only be permitted where it is within the existing built-up areas of relevant settlements, including Wallingford.
 6. The basis for this conclusion is set out in paragraphs 6.2 – 6.6 of the delegated
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report. The substantive explanation for the site's failure to comply with Policy H1 3.iii) is that 'in the absence of development to the west, the proposed development would extend beyond the existing built limit of the village'. The settlement reference should presumably be 'the town' because of Wallingford's position in the settlement hierarchy.

7. The Council also refers to the fact that neighbouring dwellings are located to the north and east. While it is not explicitly stated as such, it is reasonable to assume that the Council considers that these neighbouring dwellings are within the built-up area, particularly as the only explanation given for the failure to comply with 3.iii) of the policy is the absence of development to the west.
8. Policy H1 4. is potentially relevant in these circumstances. This states that residential development of previously developed land will be permitted within and adjacent to the built-up areas of towns and other settlements. The appeal site comprises an established dwelling and its curtilage, which is considered by the Council to be outside a built-up area. As such, it can reasonably be considered to meet the definition of previously developed land included in the National Planning Policy Framework. In these circumstances, there is a good chance that the appeal site would meet the requirements of point 4. as it could involve previously developed land adjacent to Wallingford's existing built-up area.
9. It is not possible to infer as a matter of fact that had the Council had explicit regard to this point, it would have overcome the reason for refusal, particularly as other matters and related policies concerning infilling and backland development are referred to in the first reason for refusal. However, given the circumstances described, it is reasonable for the applicant to expect this point to have been considered by the Council in a substantive manner; and, conversely, unreasonable for the Council to not have full regard to Policy H1 in the circumstances of this case. The fact that it did not do so, in both the delegated report and appeal statement, will have resulted in the applicant incurring costs in addressing the matter in support of the appeal.
10. Accordingly, for the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

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 South Oxfordshire District Council shall pay to Mr G Bertram (Gareth Bertram Ltd) the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in respect of the Council's reason for refusal 1; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to South Oxfordshire District 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.

J Bell-Williamson INSPECTOR