



Costs Decision

Hearing held on 30 October 2024

Site visit made on 30 May and 30 October 2024

by Jennifer Wallace BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2024

Costs application in relation to Appeal Ref: APP/M1520/W/23/3330878 Walsingham House, Lionel Road, Canvey Island, SS8 9DE

- 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 Castle Point Borough Council for a partial award of costs against Mr Sean Tappenden of SJT Developments Ltd.
 - The appeal was against the refusal of planning permission for Proposed Phase 2 to application 21/0688/Ful to provide 13 No Flats and 20 No Residential Houses.
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Decision

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

The submissions for Castle Point Borough Council

2. While the Council made its costs application in writing prior to the opening of the hearing, this was not passed on to Mr Tappenden's agent. Consequently, the application was made orally.
3. The Council's case is that they worked proactively with the appellant following the refusal of planning permission to secure a resubmission of the application which was subsequently approved subject to a planning obligation on 4 June 2024. The Council considers that the appellant was unreasonable to continue the appeal on the basis that they had entered into a planning obligation, although the appellant now maintains this would make the development unviable.

The response on behalf of Mr Sean Tappenden of SJT Developments Ltd

4. The response was made orally at the hearing. It was set out that the viability of the development has been adversely affected by the delay in obtaining planning permission and that it was necessary to secure the permission in order to secure finance and to continue the employment of staff. It was set out that it was proper to continue the appeal as they were aware that an application to vary the planning obligation would not be supported.

Reasons

5. 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.
6. I have found in my other costs decision that the Council was unreasonable in its original decision to refuse planning permission for the development.

However, that was rectified on 4 June 2024 with the subsequent grant of planning permission 24/0042/FUL. The PPG¹ advises that costs cannot be claimed for the period during the determination of the planning application but that behaviour and actions at the time of the planning application can be taken into account in the consideration of whether or not costs should be awarded.

7. It is expected that parties in the planning system are making accurate submissions and acting in good faith. The appellant admits that they entered into a planning obligation they considered would render the development unviable. While it was in relation to a subsequent planning application, it nonetheless is of direct relevance to this appeal which was for the same proposal. I consider this constitutes unreasonable behaviour. I also consider the Council has been put to unnecessary or wasted expense in continuing to defend the appeal. However, the unreasonable behaviour on the part of the appellant only dates from the point at which the Council granted the subsequent planning permission.

Conclusion

8. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the actions of the developer after 4 June 2024 and a partial award of costs is therefore warranted.

Costs Order

9. 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 Mr Sean Tappenden of SJT Developments Ltd shall pay to Castle Point Borough Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred after 4 June 2024; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Mr Sean Tappenden of SJT Developments Ltd, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Jennifer Wallace

INSPECTOR

¹ 'Appeals' Paragraph: 033 Reference ID: 16-033-20140306 Revision date: 06 03 2014