
Costs Decision

Site visit made on 20 November 2024

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 December 2024

Land to the North of Lower Road, Teynham, Kent ME9 9EQ

Costs application in relation to Appeal Ref: APP/V2255/W/24/3349574

- 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 Guy Osborne of Country House Developments Ltd for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for the creation of 23 new homes, associated landscaping, parking, relocation of commercial buildings and provision of a PROW cycleway/footpath.
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Decision

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

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. It adds that local planning authorities are at risk of an award of costs if they behave unreasonably in relation to procedural matters at the appeal. They are also at risk of an award if they behave unreasonably with regard to the substance of the matter under appeal, for example; by preventing development that should clearly be permitted having regard to its accordance with the development plan, by not determining cases in a consistent manner or by providing generalised or inaccurate assertions about a proposal's impact.
4. In terms of procedural matters, much of the claim relates to matters prior to the appeal. This includes the time taken to go through the pre-application process, the time taken to determine the planning application and the succession of planning officers dealing with the application. However, as set out in the PPG, costs cannot be claimed for the period during the determination of the planning application. Indeed, even if I were to account for the Council's behaviour during the application process and consider it was unreasonable, there is no evidence to suggest the appeal could have been avoided and therefore no expense was unnecessary. Moreover, during the appeal, both parties have worked together proactively to address the reasons for refusal, including to agree matters covered by the unilateral agreement, such that no wasted expense has been incurred by the applicant.
5. The planning application was refused on 10 June 2024. In the officer's report it was stated that the Council had a 5.13 years supply of housing land. The applicant states that prior to the Council's decision, they had suggested that

this position was flawed. Subsequently, an appeal decision¹ relating to Ufton Court, dated 5 July 2024 found that the Council had only a 4.1 years supply of housing land. Following this decision the Council have now accepted they do not have a 5 years supply of housing. However it was not unreasonable for the Council to wait for the outcome of the Ufton Court appeal before reconsidering their housing land supply position. It is understood that a decision on another application by another developer that was being determined by the Council at that time was delayed pending the outcome of the Ufton Court appeal. However as I have no further details of the factors behind that decision, I cannot conclude that the Council were inconsistent in their approach.

6. The applicant contends that the Council refused to entertain a fresh application, which the Council deny. Even if that were the case, I have no evidence to suggest that that has resulted in unnecessary expense.
7. The Highway Authority's concern was mainly around the practicalities of providing and maintaining the pedestrian link through the Selby House site to connect the proposed development to the centre of Teynham, which would now appear to be addressed by the legal agreement provided during this appeal. Notwithstanding that, it was not unreasonable for the Council to remain to have their own concerns regarding the suitability of the pedestrian route through this third party land, as set out fully and clearly in their officer's report.
8. Overall, for these reasons, it has not been demonstrated that the Council behaved unreasonably resulting in unnecessary or wasted expense on behalf of the applicant, as described in the PPG. Therefore, the application for an award of costs is refused.

A Owen

INSPECTOR

¹ Ref: APP/V2255/W/23/3333811