
Costs Decision

Site visit made on 11 November 2024

by A Hickey MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th January 2025

Costs application in relation to Appeal Ref: APP/Z1510/W/24/3341180

The Mall, London Road, Braintree, Essex CM77 8FL

- 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 JVIL (London Road) Ltd for a partial full award of costs against Braintree District Council.
 - The appeal was against the refusal to grant outline planning permission for residential development of up to 9 units.
-

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. The applicant advances five 'grounds' supporting an application for costs.

Ground 1 - Failing to properly consider the application as an outline application

4. The Council has stated that the proposed site layout plan is not labelled as indicative, and therefore, the Council was within its rights to assess the scheme based on the drawings before it. Even if the submitted drawings are not marked as illustrative or indicative, the Courts have found that, based on the circumstances, the submitted drawings can be sensibly understood to have that purpose. Therefore, it is not essential for drawings to be annotated in this way if they relate to matters that are reserved.
5. However, for the reasons set out in the accompanying decision, the maximum number of units that could be accommodated on the site can be considered at the outline stage even when the layout remains a reserved matter. I, therefore, find no unreasonable behaviour in the Council's approach to determining the application in this regard.

Ground 2 – Achieving biodiversity gain and tree planting

6. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the Council's landscape and ecology officers provided clearly justified responses during the application's determination. There is no

substantive evidence that additional technical assessments were required to accompany these consultee responses.

7. As such, regarding the determination of the planning application and notwithstanding my findings in the appeal decision, I find that there was no unnecessary or wasted expense.

Grounds 3 and 4 – Site area and planning obligations

8. I have not been supplied with any substantive evidence indicating an approach on other nearby application sites regarding the red line site boundary matches the circumstances in this particular case. As such, I find the Council determined the appeal site area on its own merits.
9. The reasons why the Council considered the site area had been manipulated are detailed in the Officer Report and were a matter of planning judgment for the decision maker. In the Council, determining the site area to be 0.5ha or above would mean the threshold for planning obligations was triggered.
10. While I have reached a different conclusion, the Council has substantiated its findings on the appeal site area and explained the reason for seeking a planning obligation that aligns with the development plan. Accordingly, the Council has not been unreasonable in this regard.

Ground 5 – Failure to give suitable weight

11. The weight to be afforded relevant development plan policies and various considerations, including the consultee responses, are matters of planning judgment. The Council has provided reasons to underpin its position at appeal. Whilst I have not agreed with the Council on all aspects of the appeal, I find it has substantiated its position in respect of these issues. There is no substantive evidence that the Council did not comply with Section 38(6) of the Planning and Compulsory Purchase Act 2004. Accordingly, it has not been demonstrated the Council did not give sufficient consideration and weight to material considerations in favour of the proposal.

Conclusion

12. Overall, despite my alternative findings to the Council with respect to some of the main issues on the planning application, I find that there was no unnecessary or wasted expense in appealing the Council's reasons for refusal. As parties in planning appeals and other planning proceedings normally meet their own expenses, I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described in the PPG, has not been demonstrated and that no award of costs is justified.

A Hickey

INSPECTOR