



Costs Decision

Site visit made on 25 August 2020

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st September 2020

Costs application in relation to Appeal Ref: APP/A0665/W/19/3241633 Land at the Fox and Barrel Public House, Cotebrook, Tarpорley, CW6 9DZ

- 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 Cheshire West & Chester Council for a partial award of costs against Clay Rose Homes Ltd.
 - The appeal was against the refusal of planning permission for the erection of four dwellings.
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Decision

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

Reasons

2. 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 Council submits that the appellant has acted unreasonably in failing to adhere to deadlines and by introducing late evidence that led to it incurring additional expense. Moreover, it is contended that the appellant prolonged the proceedings by introducing a new issue.
4. The appellant's case rested in part on the contention that 2 market dwellings were necessary in order to subsidise the provision of the 2 affordable units. However, the appellant did not submit any viability evidence with its Appeal Statement to substantiate this. In this regard, it stated that "*a detailed viability assessment to support this proposition is currently under discussion with the Council and will be confirmed in the Statement of Common Ground in due course*" (paragraph 2.36). This clearly indicates that it was the appellant's intention at the outset to submit late evidence to the appeal.
5. Subsequently, the appellant submitted a viability appraisal and statement dated 27 February 2020. I accepted this as late evidence as it was a key piece of information that was necessary in order to fully understand the appellant's case. However, it was submitted significantly after the relevant deadline.
6. PPG identifies a "*delay in providing information or other failure to adhere to deadlines*" and "*introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that*

*would not otherwise have arisen*¹ as examples of behaviour that may give rise to a procedural award of costs against an appellant. In this case, the appellant failed to adhere to deadlines and submitted substantial evidence at a late stage that was central to its case. It clearly acted unreasonably in this regard.

7. The Council appointed specialist consultants to scrutinise the viability appraisal, as it did not have the necessary in-house expertise. In doing so, it incurred significant expense in the form of consultancy fees. However, it would have incurred this expense in any case had the viability appraisal been submitted on time. Whilst the appellant clearly acted unreasonably, the expense incurred was therefore not 'unnecessary or wasted'.
8. Separately, whilst the appellant originally requested that the appeal be conducted by way of a hearing, I subsequently dealt with it via written representations. The Council therefore did not incur any wasted or unnecessary expense in this regard.
9. The Council's costs submission also implies that no material considerations were put forward to indicate that the decision should have been made other than in accordance with the development plan. However, the appellant submitted detailed evidence in relation to affordable housing need in the area and asserted that this benefit should outweigh any conflict with policy. Accordingly, this contention is unfounded.
10. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Thomas Hatfield

INSPECTOR

¹ Paragraph: 052 Reference ID: 16-052-20140306