

Costs Decision

Inquiry held on 1,2,3 and 4 November 2016

Site visit made on 4 November 2016 and 10 November 2016

by L Gibbons BA (Hons) MRTPI

Decision date: 4 January 2017

Costs application in relation to Appeal Ref: APP/Q1445/W/16/3147419 Wanderdown Road, Ovingdean, East Sussex BN2 7AB

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Brighton & Hove City Council for a partial award of costs against Mr Peter McDonnell.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period for planning permission for the erection of 9 houses and access drive.
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Decision

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

The submissions for the applicant

2. The costs application was submitted in writing by the Council at the Inquiry.

The response by the appellant

3. The appellant responded verbally at the Inquiry. In respect of the Council's position on the five year supply of housing land it is on the Council's shoulders to provide information. The Council have delayed in providing this information in correspondence which took place at the end of October 2016. A long section drawing was provided in response to evidence from the Council. There was nothing in the putative reasons for refusal relating to heritage. The section was also provided in time for it to be properly understood. In respect of the ecology reports, this was provided as part of the ongoing dialogue and in seeking to narrow down issues at the Inquiry. The Council removed the documents from the Core Document list. The application is without substance and needs to have shown that the work was not necessary. The Council's housing land supply witness would have attended the Inquiry anyway. The costs regime is not meant to discourage the process of discussion. No significant costs have been incurred by the Council.

Final response by the applicant

4. The Council's final response was given verbally. There was no evidence on five year housing land supply either in proofs of evidence or given verbally at the Inquiry. Requesting information on 25th October 2016 was very close to the start of the Inquiry. The matter of ecology and the Core Documents list is of no relevance. A final ecology report was provided on Friday only a few days
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before the start of the Inquiry. The Council's ecology witness had to undertake additional work.

Reasons

5. The Planning Practice Guidance (the Guidance) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
6. As I have set out in my appeal decision, I have concluded that the Council is able to demonstrate a five year supply of housing land. The Council submits that the appellant did not provide any evidence to demonstrate that the Council did not have a five year supply of housing land. The Council employed a consultant to respond to the appellant's Statement of Case which referred to challenging the Council's ability to demonstrate a five year supply of housing land. I consider that the production of the proof of evidence and the appearance at the Inquiry on behalf of the Council would have been a necessary part of the process.
7. Although the appellant failed to provide sufficient evidence to convince me in this matter, some evidence was provided and was referred to in the proof of evidence. In terms of additional information provided by the appellant the day before the Inquiry, I have had regard to the correspondence¹ relating to the submission of the position statement by the appellant. The appellant clarified that the statement was sent to set out areas of agreement/disagreement on housing land supply. This was as requested by the Council to finalise the Statement of Common Ground. Although I note that the Council's witness would have had to assess the position statement, it did not to my mind introduce any substantive new matters which the Council had not already covered in their proof of evidence relating to the five year supply of housing land. I consider that the appellant did not act unreasonably in this respect.
8. In terms of ecology evidence, I note that the appellant's final ecology reports (Ecological Assessment and Confidential Badger Report) were produced in response to comments on the drafts by the Council's ecology witness. The comments were set out in a letter from the Council dated 25 September 2016. This position was clearly set out in the appellant's ecology proof of evidence. The Council would have therefore been aware of the production of these documents when the proofs were submitted in early October 2016. The final reports are referred to as being Core Documents but the inclusion of these does not appear to have been agreed by the Council.
9. I accept that the applicant's ecology witness had to undertake some work on these reports before the Inquiry. Notwithstanding the timing of when these were provided, I consider this would have required the Council to assess the final versions in any event. Although some cross checking may have been needed, the appellant's proof of evidence clearly identified the particular paragraphs in the 25 September letter which were being responded to. From the information before me, I consider that the final reports did not raise any significant new matters. I conclude that it was not unreasonable for the appellant to approach the ecology assessment in this way by attempting to narrow down the issues which were in dispute.

¹ Email from Mr Carpenter dated 31 October 2016

10. The production of the section showing the appeal site in relation to specific locations within the Conservation Area was part of the appellant's rebuttal proof on landscape matters. This was made in response to the Council's concerns relating to heritage identified in their proof of evidence on these matters. Furthermore, matters relating to heritage were not raised in the Council's reasons for refusal. The section was illustrative and I consider did not introduce fresh and substantial evidence which would have necessitated in extra preparatory work by the Council. The appellant did not act unreasonably in this regard.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance has not been demonstrated.

L Gibbons

INSPECTOR