

Costs Decision

Hearing held and site visit made on 17 January 2017

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 March 2017

Costs application in relation to Appeal Ref: APP/U1105/W/16/3152976 Weeks Farm, Road from Talaton Cross to Beacon Cross, Talaton, Devon EX5 2RG

- The application is made under the Town and Country Planning Act 1990 as amended, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by East Devon District Council for a partial award of costs against Mrs M & W Broom & Adams.
 - The hearing was in connection with an appeal against a refusal to grant outline planning permission for development described on the application form as 'construction of 25 dwellings and 20 space car park for village hall (outline application discharging means of access only)'.
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Decision

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

The submissions for East Devon District Council

2. The costs application was made at the hearing verbally and a transcript was submitted in writing. The Council's case for a partial award of costs relates to procedural matters. They aver that the appellants introduced fresh and substantial evidence in the course of the appeal which necessitated the consideration of additional matters, unduly prolonged appeal proceedings, and thereby resulted in their incurring costs related to officer and administrative time. The Council's case is specifically limited to the 'the additional information put forward today [i.e. the day of the hearing].'

The response by Mrs M & W Broom & Adams

3. The appellants' response was made verbally at the hearing by Mr Milverton acting on their behalves. They argue that the matters cited by the Council in this context were either referred to within their appeal statement, or that any evidence presented directly related to the points made by the Council in opposing the development proposed.

Reasons

4. Irrespective of the outcome of the appeal, the Planning Practice Guidance (the 'Guidance') sets out that costs may only be awarded against a party who has
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behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.¹

5. The associated appeal decision clarifies the nature of the development proposed, having taken account of the arguments and evidence presented by both main parties. Whilst it is therefore unnecessary to reproduce at length the substance of that decision here, in essence the appellants sought to make the case that it was appropriate for me to consider schemes of less than 25 homes as was the original proposal, with reference to the judgement handed down in *Bernard Wheatcroft Ltd. v Secretary of State for the Environment and Anor* ('Wheatcroft').²
6. I established within the appeal decision, on the basis of the information before me, and with reference to the approach established via *Wheatcroft*, that it was not appropriate to consider alternative schemes for fewer homes. There is no reference to such alternative schemes within the appellants' planning statement supporting the application. There is also no specific reference to such alternative schemes made within the appellants' statement of case at appeal which was submitted on 22 June 2016.³ Moreover much of the evidence put forward prior to the hearing related solely to a scheme for 25 homes.⁴
7. The first substantive reference to alternative schemes is apparently within correspondence from the appellants to the Planning Inspectorate and Council dated 3 October 2016 (the 'correspondence') as subsequently incorporated into a draft unilateral undertaking submitted on 21 December 2016 (the 'undertaking'). A letter on behalf of the appellants to the residents of Talaton dated 10 October 2016 (the 'letter to residents') explains that the proposal is for '18 – 25 homes'.
8. The Council's appeal statement was received on 4 November 2016, which post-dates the correspondence referred to above and the letter to residents. Paragraph 7.4 of this statement explains that 'later information indicates that the appellant is now seeking an alternative scheme...'. Subsequently the Council contend that to consider such an alternative would conflict with the principles established via *Wheatcroft*.
9. The hearing process is set out in Annexe E of the Planning Inspectorate's Procedural Guide, Planning appeals – England (the 'Guide') pursuant to the provisions of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (the 'DMPO'). The Guide sets that an appellant's grounds of appeal 'should make up the full case'.⁵

¹ Reference ID: 16-028-20140306.

² [1982] JPL. 37.

³ Notwithstanding that therein there is reference to a different proportion of affordable homes proposed, in paragraphs 16.2 and 17.3 in particular, and to Strategy 35 of the East Devon Local Plan 2013 – 2031 adopted on 28 January 2016 (the 'Local Plan') with reference to a scheme for 25 homes.

⁴ Paragraph 2.5 of the appellants' appeal statement indicates that this would be 'the lowest number of houses which can meet the needs [in the village]', which in turn refers to the appellants' Viability Assessment, referred to as document JFM/004, which is ostensibly calculated on the basis of 25 homes rather than for a scheme of 15 or 18 homes or fewer.

⁵ At appendix E.2.

10. The Guide further sets out that appellants should be confident at the time that they make their appeal that they are able to make their full case, and that 'the appeal process should not be used to evolve a scheme'.⁶ Therefore any relevant information put forward after the submission of statement of cases by the main parties at an appeal determined via hearing would necessarily need to be addressed at the hearing in the interests of procedural fairness.
11. In this context I cannot therefore support the appellants' position that the prospect of alternative schemes was identified within their appeal statement, or that the Council should spontaneously have considered proposals for 15 or 18 homes as a consequence. I also cannot agree with the appellants' contention that alternative schemes or evidence put forward in support thereof directly relates to rebutting points made by the Council, given that the appellants' introduced such considerations only after the submission of their appeal statement. In this respect I therefore find that the appellants' approach here amounts to unreasonable behaviour.
12. However the Council's case for an award of costs is specifically limited to 'the additional information put forward today [i.e. the day of the hearing]'. I clarified this limitation specifically at the hearing, and am bound by it in approaching this costs decision.
13. Setting aside the discussion above, the Council's appeal statement expressly addressed the appellants' intention to put forward alternative schemes, Wheatcroft, and their view in respect of compliance with Strategy 35 of the Local Plan. Notwithstanding that any relevant information or argumentation submitted following the appellants' statement of case was addressed at the hearing in line with the procedure as established above, only three documents were in the event put forward by the appellants during the course of the hearing.
14. These documents are those listed as Nos 2, 3 and 5 within the appendix of documents to the appeal decision.⁷ None necessitated an adjournment of the hearing. Nos 2 and 3 are public documents related to the Council's Local Plan, in respect of which the Council had no specific comments to make other than acknowledging the validity of the information therein. Document No 5, albeit that there is some ambiguity in the reference number given, is referred to in paragraph 6.0 of the appellants' appeal statement and appended thereto under reference JFM/016.
15. Consequently the Council's consideration of this information put forward during the appeal did not unduly prolong the hearing, and any time expended in the consideration thereof was in my view *de minimis*. Consequently, I conclude, within the terms of the costs application, that unnecessary or wasted expense has not been incurred through the introduction of fresh information by the appellants during the hearing, notwithstanding my finding in paragraph 11 above.

⁶ Paragraphs 1.2.1 and section M.2. of the Guide.

⁷ Documents entitled respectively East Devon Local Plan examination, further evidence paper of East Devon District Council - August 2015 – Housing trajectory, East Devon District Council Paper for Local Plan Examination – Topic Paper Number 2 – Affordable Housing – January 2014, and Document entitled 'Talatón – land to the West of Weeks farm, Talatón. Public consultation exercise. Undertaken by John Milverton MA MRTPI'.

16. For the above reasons, and having taken account of all other matters raised, unnecessary expense has not been incurred by the Council within the terms of the costs application made, irrespective of the behaviour of the appellants. I therefore conclude with reference to the approach in the Guidance that an award of costs is not justified in this instance.

Thomas Bristow

INSPECTOR