
Costs Decision

Hearing held on 4 October 2016

Site visit made on 4 October 2016

by Beverley Doward BSc BTP MRTPI

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

Decision date: 28 March 2017

Costs application in relation to Appeal Ref: APP/B3410/W/16/3148540 The Lont, Stubby Lane, Draycott in the Clay, Staffordshire, DE6 5BU

- 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 Ms J Whetter for a full award of costs against East Staffordshire Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the development proposed which was described as "change of use of land to accommodate up to 8 residential dwellings, associated garaging and access".
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Decision

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

Procedural Matter

2. The application for costs was made after the Hearing session. In the circumstances of this particular case where the Hearing had been left open to allow the submission of further evidence and given that the Planning Practice Guidance (PPG) is guidance rather than statute I used my discretion to allow written costs submissions and responses. The submissions and responses were submitted within the timescales set.

The submissions for Ms J Whetter

3. The application is made in the context of both procedural and substantive matters. It is contended that the Council has behaved unreasonably in a number of the ways cited in the PPG as the type of behaviour which may give rise to procedural and substantive awards of costs against a local planning authority.
4. In relation to procedural matters these are contended as being a lack of co-operation with the other party, delaying providing information, not agreeing a statement of common ground, introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen, prolonging the proceedings by withdrawal of a reason for refusal, providing information that is shown to be manifestly inaccurate or untrue and deliberately concealing relevant evidence at a planning application or at subsequent appeal.
5. With respect to the substance of the matter under appeal these are contended as being a failure to produce evidence to substantiate each reason for refusal on appeal, vague, generalised or inaccurate assertions about a proposal's

impact, which are unsupported by any objective analysis, imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus not complying with the guidance in the National Planning Policy Framework (the Framework) on planning conditions and obligations and not reviewing the case promptly following the lodging of the appeal.

The response by East Staffordshire Borough Council.

6. The Council contends that it has not acted unreasonably in relation to procedural or substantive matters so as to cause the applicant to incur unnecessary or wasted expense in the appeal process.
7. In relation to the specific procedural matters referred to by the applicant the Council considers that there was no lack of co-operation and indicates that the applicant was informed prior to the determination of the application that it would be refused and offered advice over how policy conflicts could be overcome but that such advice was not followed. It considers that it did not fail to adhere to deadlines and that it was reasonable to address information cited by the appellant in the Hearing itself.
8. The Council considers that the lack of an agreed Statement of Common Ground did not lead to any additional discussion at the Hearing itself or additional work. It also indicates that in relation to the reason for refusal relating to affordable housing its position was only confirmed close to the Hearing after having sought separate advice on the matter and that the discussion on this matter took up only limited time during the Hearing.
9. The Council contends that there were no errors in its published information on housing land supply in relation to completions and indicates that it provided clarification on the figures at the Hearing and further evidence to substantiate that within the timescale set by the Inspector. It also considers that the discussion during the Hearing on this matter was not prolonged.
10. The Council contends that it did not provide any information that was manifestly inaccurate or untrue and that verbal evidence provided during the Hearing replicated the findings of its housing land supply calculation. In relation to the site at Branston Locks the Council provided information relating to this site and contends that the information provided does not affect its assessment of the delivery of the site. It also considers that it did not provide any evidence resulting in differing rates of delivery as set out in the 5 year land supply calculation and that therefore there was no inaccurate evidence or unnecessary discussion at the Hearing regarding this matter. The Council contends that it is for the appellant to determine how much work is required to contest its housing land supply position and it considers that no evidence or discussion during the Hearing session resulted in the necessity of additional work for the applicant.
11. In relation to the applicant's contention that the Council behaved unreasonably with regard to the substance of the matter it considers that the Officer's report and the verbal evidence provided by the Highway Authority's Officer provided the evidence to substantiate its reasons for refusal 4 and 5 and that there is no requirement for the Council to prepare any additional evidence if it considers that the issue is adequately addressed in the Officer's report or that there is an opportunity to verbally address the issue in the Hearing.

12. The Council considers that the Officer's report adequately addresses the impact of the proposals in relation to reasons 4 and 5 and that the Hearing provided the opportunity for these to be further discussed. In relation to the suggested condition requiring the provision of household waste recycling/disposal receptacles such a condition has been included on other developments and therefore the Council considers it to be reasonable. It also contends that the appellant was made aware during the planning application process that the provision of bins would be sought should permission be granted and that therefore its suggestion to impose such a condition has not led to unnecessary work for the applicant.
13. In relation to the applicant's contention that the Council acted unreasonably by not reviewing their case once the appeal was lodged and not pursuing the reasons for refusal relating primarily to affordable housing and highway safety the Council considers that its Officer's report adequately addressed the appeal case.

Reasons

14. The 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.
15. In relation to the contention that the Council acted unreasonably in relation to procedural matters whilst the Council may not have been as helpful as it could have been in some respects I am not persuaded from the evidence that its behaviour was manifestly uncooperative. The applicant was informed prior to the determination of the application that it would be refused and offered advice. Although the Council did not submit a Supplementary Statement following the documentation it submitted questioning the change of appeal procedure from written representations to a Hearing, it addressed the matters raised by the applicant at the Hearing, prepared a note setting out its position in relation to Housing Land Supply for the Hearing and responded to questions raised by the Inspector at the Hearing.
16. The Council did not agree a Statement of Common Ground (SoCG) indicating that this was because there was little common ground between the parties. Whilst there were undoubtedly some areas of agreement which could have been included in a SoCG, such as the relevant planning policies, I am not persuaded that the applicant incurred any unnecessary work or expense as a result of these not being identified nor did it necessitate any additional discussion at the Hearing.
17. The Council indicated at the beginning of the Hearing that in the light of the Court of Appeal judgment of May 2016 in relation to affordable housing contributions from developments of 10 units or less it was no longer pursuing its third reason for refusal. However, given that the planning application was determined before the date of this judgment, I am satisfied that the Council did not act unreasonably in its inclusion of this reason for refusal in its decision. In the light of the timing of its decision not to pursue this reason for refusal at the appeal even if the Council's position were to have been addressed in a SoCG, the work undertaken and expense incurred by the applicant in addressing this matter in her appeal statement would not have been avoided. In addition there was little time spent discussing this matter at the Hearing. Accordingly, I am satisfied that the proceedings were not unnecessarily prolonged.

18. The Council explained an apparent discrepancy in its published information regarding housing completions at the Hearing session after taking advice and at the request of the Inspector provided further information after the Hearing to substantiate that explanation. The Council would have been aware of this matter before the Hearing session given that it was included in the applicant's appeal statement. Therefore, it would have been helpful if it had sought the information in advance so as to explain the position at the Hearing without needing to seek further advice. Nevertheless, the discussion at the Hearing session on this matter was not over long or protracted. Furthermore, even if the Council had been able to provide the information immediately at the Hearing it could not have foreseen the request from the Inspector to provide further information to substantiate its explanation. Whilst, as indicated in my appeal decision, there appear to be some further discrepancies between the additional information provided by the Council after the Hearing session and its published information, I have no reason to consider that the Council submitted manifestly inaccurate or untrue information. Although the discussion on specific sites at the Hearing did result in the Council needing to check the position and correct its evidence in relation to the planning status of a specific site this does not indicate that it submitted deliberately inaccurate or untrue evidence on this matter nor did it necessitate any further work or expense by the applicant.
19. The position in relation to the delivery of specific sites is constantly changing. Therefore, it does not necessarily follow that any differences between the information that was included in the documentation that the Council submitted at the time of the change of appeal procedure which predated its published information should necessarily question the validity of the information contained in its later published document. Furthermore, whilst there is also a discrepancy between the position indicated in relation to lapse rates in this information and the Council's later published document the Council indicated at the Hearing that it had previously applied lapse rates to all sites but had more recently moved to applying them only to small sites. Therefore, the position indicated in its published information was correct. Accordingly, the applicant did not incur any unnecessary or wasted expense in addressing this matter.
20. Having regard to all of the above therefore, the Council could have been more helpful in agreeing various procedural matters and addressing some apparent discrepancies in its information with the applicant before the Hearing session. However, I consider that its behaviour in these respects was not so unreasonable as to result in unnecessary or wasted expense, as described in the PPG.
21. In relation to the applicant's contention that the Council acted unreasonably in relation to the substance of the matter although I have found against the Council in the appeal the Officer's report considered the proposal against the relevant policies of the East Staffordshire Local Plan 2012-2031 (Local Plan) and its reasons for refusal referred to the relevant policies. The Council's decision not to pursue its third reason for refusal was only made close to the date of the Hearing after having sought separate advice on the matter and the Council indicated its position at the start of the Hearing session. Therefore, there was little discussion on this matter. The Council and the Highway Authority further substantiated their remaining concerns about the proposal at the Hearing by reference to the policies of Local Plan. Accordingly, notwithstanding that the discussion at the Hearing resulted in the Council and

the Highway Authority conceding on some of the points raised by the appellant, I am satisfied that the Council showed reasonable planning grounds to substantiate its reasons for refusal.

22. The Council explained its reasoning for its suggested condition relating to the provision of household waste recycling/disposal receptacles and why it considered it met the tests set out in paragraph 206 of the Framework. I have agreed with the case put by the applicant that such a condition would not meet the tests set out in the Framework. Therefore, the applicant has not incurred any unnecessary or wasted expense as a result.
23. Accordingly, having regard to all of the above I am also satisfied that the Council did not act unreasonably in relation to the substance of the matter in this case.

Conclusions

24. For the reasons given above therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, an award of costs is not justified.

Beverley Doward

INSPECTOR