
Costs Decision

Inquiry held on 16 and 17 February 2017

Site visit made on 17 February 2017

by R W Allen B.Sc PGDip MRTPI

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

Decision date: 05 May 2017

Costs application in relation to Appeal Ref: APP/E2734/W/16/3150954 Land at Orchard Close, Knaresborough, North Yorkshire

- 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 Mr Robin McGinn (Persimmon Homes (Yorkshire) Ltd) for a full award of costs against Harrogate Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for erection of up to 74 dwellings with associated access and open space.
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Decision

1. The application for a full award of costs is refused. The application for a partial award of costs is allowed in the terms set out below.

The submissions for Mr Robin McGinn (Persimmon Homes (Yorkshire) Ltd)

2. The appellant's application for costs was made in writing prior to the opening of the Inquiry. The appellant orally added that its costs have increased due to the change of procedure from a Hearing to an Inquiry.

The response by Harrogate Borough Council

3. The Council response was made orally at the Inquiry. The Council acknowledges that it has acted unreasonably in not defending its reason for refusal on air quality, and this has led to wasted expenditure on the appellant's part. However, the Council draws the line after 20 July 2016, the date in which it says it informed the appellant that it was no longer defending the appeal. The Council contends the appellant had a choice at that point and could have withdrawn the appeal and engaged with the Council. The appellant's decision to continue with the appeal was done so knowing that this was the most prolonged and expensive option. The Council contends that it is not responsible for a full award of costs, and any additional costs incurred by the appellant after 20 July 2016 should be borne by him. By proceeding with an appeal, the appellant knew it would have to address third parties comments, and as such preparation for the appeal was not wasted expense. A partial award of costs is therefore justified, but a full award of costs is not.

Reasons

4. Paragraph 030 of the Guidance (*reference ID: 16-030-20140306*) advises that costs may only 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. Paragraph 049 of the Guidance (*reference ID:*
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16-049-20140306) states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal by, amongst other things, failure to produce evidence to substantiate each reason for refusal on appeal.

5. I agree with the main parties that the Council acted unreasonably in its decision not to defend its reason for refusal on air quality matters. It follows that any work undertaken by the appellant in its pursuance of the appeal up until 20 July 2016 has resulted in wasted expenditure on the appellant's part, and the Council should be responsible for the appellant's costs up to this point. The crux of the matter here is whether the Council remains responsible for all the appeal costs after this date. I find that it is not.
6. The Council informed the appellant on 20 July 2016 that it was no longer prepared to defend the appeal. While it was necessary for the appeal to proceed in order for me to reach my decision, the appellant was not obliged to undertake any further substantive work after this date. The appellant did so nonetheless, responding to third parties comments with a not insignificantly sized bundle of evidence. Whether the scale of the response was ultimately necessary or not, it resulted in a considerable burden being placed on the Hearing causing its adjournment, and ultimately prompted my decision to change the procedure of the appeal to an Inquiry.
7. I acknowledge that third parties put up weighty evidence of a complex and technical nature, including in relation to ecology matters which were not raised by the Council as a reason for refusal, and ultimately the appellant would have felt compelled to respond in some form. However, my decision to test the evidence at Inquiry cannot be said to be as a result of the Council's unreasonable behaviour.
8. I therefore find the Council did not act unreasonably after the 20 July 2016, and for the reasons given above only a partial award of costs as result of unnecessary or wasted expense, as described in the Guidance, has been demonstrated.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Harrogate Borough Council shall pay to Mr Robin McGinn (Persimmon Homes (Yorkshire) Ltd), an award of costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in defending the air quality matters from the commencement of the appeal up until and including the 20 July 2016.
10. The applicant is now invited to submit to Harrogate Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

R Allen

INSPECTOR