
Costs Decisions

Inquiry opened on 16 May 2017

Site visit made on 18 May 2017

by Paul Griffiths BSc(Hons) BArch IHBC

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

Decision date: 15 June 2017

Costs application in relation to Appeal A: APP/P1133/W/16/3150133 Land East of Penns Mount, Vicarage Hill, Kingsteignton TQ12 3BA

- 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 Codex Land Promotion Ltd for a full award of costs against Teignbridge District Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for 'outline application for up to 80 dwellings (approval sought for access)' without complying with a condition attached to planning permission Ref.14/03324/MAJ, dated 14 May 2015.
-

Costs application in relation to Appeal B: APP/P1133/W/16/3163573 Land East of Penns Mount, Vicarage Hill, Kingsteignton TQ12 3BA

- 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 Codex Land Promotion Ltd for a full award of costs against Teignbridge District Council.
 - 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 on an application for outline planning permission for a residential development of up to 90 dwellings.
-

Decisions

Appeal A

1. The application for an award of costs is allowed in the terms set out below.

Appeal B

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

The Submissions for the Appellant

3. Initial submissions made on behalf of the appellant were submitted in writing¹.
4. In final response to the submissions made on behalf of the Council, it was reiterated on behalf of the appellant that the issue around inconsistency has nothing to do with the characteristics of the respective appeal and Linden Homes sites; it is one of general approach. When it considered the Linden Homes scheme, the Council looked at the purpose of the policy. In Appeals A and B, they did not ask themselves the same questions.

¹ Inquiry Document 13

5. In terms of views out from the site, the Council's witness treated them as part of the baseline even though they do not currently exist and formed conclusions accordingly. That is unreasonable.
6. Full awards of costs are justified.

The Response by the Council

7. The appellant relies on similarities between the schemes at issue and the Linden Homes proposal approved by the Council but the circumstances were different for lots of reasons but principally, because the Linden Homes site is lower down the hill, and as a result, less prominent.
8. The Council's cases presented to the Inquiry were reasonable ones, as set out in the closing statement. There is a continued complaint about the Council's strict reliance on LP Policy KS6 but it was not applied slavishly. The planning purposes underpinning it were borne in mind.
9. The points made about answers given by the Council's witnesses in cross-examination are noted but the test for an award is not whether witnesses did well under questioning.
10. Notwithstanding the forensic points made about the landscape evidence in comparison to the Council's analysis of the Linden Homes scheme, the test is whether the Council was able to produce evidence to substantiate their stance on Appeal A, and the putative reason for refusal relating to landscape on Appeal B. The Council has done that and has not, therefore, acted unreasonably.
11. The point about views out from the appeal site is academic. If LP Policy KS6 is complied with, there would be such views available. That needs to be appreciated and the Council was not unreasonable in taking them into account in dealing with both appeals.
12. In terms of the putative reason for refusal relating to archaeology, the point about conditions is noted but archaeology is not the only issue. It cannot be argued that the appeal proceedings would have been unnecessary otherwise.
13. The Council's position is that the proposals at issue do not accord with the development plan and that position has been substantiated through a full and objective analysis rather than vague and generalised assertions. There is no significant read across to the Linden Homes scheme; the cases are not alike.
14. The point about whether dealings at reserved matters stage could have obviated the need for the condition at issue in Appeal A is noted but this is a something of a grey area and the condition was justified in the circumstances.
15. On that basis, the applications for awards of costs should not be allowed.

Reasons

16. As set out in the Planning Practice Guidance², 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.

² Referred to hereafter as PPG

17. The PPG sets out a range of behaviours that may result in an award of costs against a local planning authority.
18. These include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy, and other material considerations; 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; refusing planning permission on a planning ground capable of being dealt with by conditions where it is concluded that suitable conditions would enable the proposed development to go ahead; not determining similar cases in a consistent manner; and imposing a condition that does not meet the relevant tests for conditions.
19. In terms of **Appeal A**, I note the point made by the Council about dealing with the subject matter of the disputed condition at reserved matters stage. However, leaving aside the landscape evidence and the concessions made under cross-examination, there is a more fundamental point. Notwithstanding the approach of LP Policy KS6, it is very clear to me that both the quantitative and qualitative aspects of open space could be dealt with under reserved matters. If what came forward in pursuance of reserved matters was not, in the Council's view, in accordance with LP Policy KS6, then it could have refused to approve them.
20. In that context, the disputed condition was an unnecessary imposition and bearing in mind what the PPG says about applying conditions that fail the relevant tests, it was unreasonable of the Council to impose it in the first place, and to defend its imposition thereafter. Put simply, the appellant has been put to the expense of an unnecessary appeal in order to secure its removal.
21. On that basis, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs in relation to Appeal A is justified.
22. In terms of **Appeal B**, it needs to be borne in mind first of all that the appeal was lodged against the failure of the Council to issue a notice of their decision within the prescribed period on the originating application for outline planning permission. In response, the Council put forward two putative reasons for refusal; the second of those related to archaeology.
23. The Council's evidence makes it clear that their favoured position – maintaining the remains of the enclosure in situ – could be secured by condition. However, notwithstanding what the PPG says about the danger of refusing planning permission on a planning ground capable of being dealt with by a condition, I do not consider the Council's stance unreasonable, for a number of reasons.
24. While, in my parallel appeal decision, I have not accepted the conclusions of the Council's evidence and have sided with the appellant, I did not find the Council's evidence to be vague, generalised or inaccurate. Most importantly, it seems to me that if the Council had not included the putative reason for refusal on archaeology on the basis that it could be dealt with by their favoured condition, there would still have been a need for the matter to be covered in evidence because of the contrary approach of the alternative condition put forward by the appellant, which would involve the destruction of the asset, albeit after excavation and investigation.

25. The first putative reason for refusal related to landscape impact and the failure of the proposal to accord with the development plan, and LP Policy KS6 in particular. It is important to record first of all that in my parallel appeal decision I have agreed with the Council that the proposal at issue would not accord with LP Policy KS6 but found that other material considerations point to a conclusion contrary to the development plan. The central question is whether it was unreasonable of the Council not to do the same.
26. Consistency in decision-making is obviously important and in that respect, the comparison with the manner in which the Council approached the Linden Homes scheme is a valid one. From what I can gather from the delegated report³, it seems that the Council accepted that the proposal would be contrary to LP Policy KS6 but nevertheless approved the reserved matters on the basis that the underlying purpose of the policy would be met (in other words, material considerations indicated otherwise). In terms of the proposal at issue in Appeal B, the Council (correctly) identified a failure to accord with LP Policy KS6, but, on my analysis, did not accept that the underlying purpose of the policy would be met because of the landscape impact that would result. I do not see anything fundamentally wrong with that general approach.
27. In my parallel appeal decision, I have accepted the case presented by the appellant in terms of landscape impact and allowed Appeal B. However, that conclusion was largely based on my judgement and it does not follow directly that in reaching a different view, the Council acted unreasonably. In my view, despite the failings that were exposed under cross-examination, the evidence presented by the Council could not properly be described as unreasonably vague, generalised or inaccurate. In my view, it was sufficiently robust to justify the position they took in relation to Appeal B.
28. On that overall basis, in terms of Appeal B, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Costs Orders

Appeal A

29. 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 Teignbridge District Council shall pay to Codex Land Promotion Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
30. The applicant is now invited to submit to Teignbridge District 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.

Paul Griffiths

INSPECTOR

³ Inquiry Document 1