
Costs Decision

Hearing Held on 7 December 2016 and 3 May 2017

Site visit made on 7 December 2016

by Olivia Spencer BA BSc DipArch RIBA

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

Decision date: 18 July 2017

Costs application in relation to Appeal Ref: APP/N1920/W/16/3142931 South Medburn Farm, Watling Street, Elstree, Hertfordshire WD6 3AA

- 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 Hertsmere Borough Council for a partial award of costs against Mr M Smyth of Relic Homes.
 - The hearing 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 planning permission for demolition of the existing equestrian complex and redevelopment of the site to comprise 14 new houses, 1 conversion of the listed barn, associated parking and landscaping.
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Decision

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

The submissions for Hertsmere Borough Council

2. The costs application was submitted in writing at the hearing. The following additional points were made orally.
3. The application is for a partial award of costs incurred from the original scheduled hearing date (19 May 2016).
4. The agreed postponements of the hearing in May and August 2016 were based on an understanding between the parties that agreement would be reached on the section 106 contributions. The appeal scheme is identical to the parallel application and there was an understanding that work done on the s106 obligation was not just in respect of the planning application but also the appeal scheme. The Council should be reimbursed for the abortive work of its solicitors in preparing the s106.
5. Whilst the evidence which the appellant sought to submit at the hearing on 3 May 2017 was not accepted some work was done by its consultants in preparing a response.

The response by Mr M Smyth of Relic Homes

6. The response was made orally at the hearing.
7. An award of costs for the period before 7 December 2016 is not justified as postponements up to that date were agreed between the parties. The

appellant acknowledges that evidence submitted at the 7 December hearing and that submitted immediately before the 3 May sitting day (not accepted by the Inspector) were late and that a costs application for the period from 7 December cannot be defended.

8. Drafting of a s106 obligation would have been necessary for the purposes of the parallel application and any costs are not therefore directly related to the appeal process. The appellant was not chased by the Council's solicitors in the course of the appeal process.

Reasons

9. The Planning Practice Guidance (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.
10. Awards against appellants may be either procedural in regard to behavior in relation to completing the appeal process or substantive which relates to the planning merits of the appeal.
11. The PPG states that appellants are required to behave reasonably in relation to procedural matters on the appeal, for example by complying with the requirements and deadlines of the appeals process. Examples of unreasonable behaviour which may result in an award of costs include:
 - resistance to, or lack of co-operation with the other party or parties in providing information or discussing the application or appeal,
 - delay in providing information or other failure to adhere to deadlines
 - introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen
12. Whilst the postponements were agreed the emails attached to the costs application demonstrate that throughout the period from the first postponement to the hearing opening on 7 December 2016 the Council's consultants BNP Paribas made several attempts to seek the co-operation of, and negotiation with, the appellant. Co-operation of the appellant was evidently not forthcoming and very shortly before the opening of the hearing the Council was informed that the consultants that had prepared the appellant's viability report had not been instructed to attend the hearing. Different consultants were appointed and new evidence submitted at the hearing.
13. The late submission of evidence necessitated an adjournment to allow the Council to consider and respond. The appellant was warned of and accepted that this may result in a costs application. Following the adjournment on 7 December 2016 the appellant failed to provide the further information proposed or to respond to requests from the Council's consultants. The Council was advised that the appellant's viability consultant would not be attending the resumed hearing. A request was made only 2 working days before the resumed hearing to submit further evidence.

14. The appellant has failed to co-operate with the Council in discussing the appeal since the hearing was first postponed in May 2016, has delayed providing information and has introduced fresh and substantial evidence at a late stage necessitating an adjournment and extra preparatory work on behalf of the Council. In so doing the appellant has acted unreasonably resulting in wasted and unnecessary expense for the Council in preparing for and appearing at the hearing.
15. Work done by the Council's solicitors in respect of the parallel application would fall outside the costs application. How much if any preparatory work was done by the Council on a s106 agreement for the appeal scheme, and thus amounted to wasted expense in respect of the appeal proceedings, is not a matter for my determination.

Costs Order

16. 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 Mr M Smyth of Relic Homes shall pay to Hertsmere Borough Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred since 19 May 2016; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to Mr M Smyth of Relic Homes, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Olivia Spencer

INSPECTOR