



Costs Decisions

Inquiry Held on 13 to 15 December 2016, 25 to 28 April 2017 and 2 May 2017
Site visit made on 12 and 14 December 2016 and 14 January 2017

by J Dowling BA(Hons) MPhil MRTPI

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

Decision date: 13 September 2017

Costs application in relation to Appeal Ref: APP/J0405/W/16/3142524 Land adjacent to 80 Chilton Road, Long Crendon, Buckinghamshire (Cost application A)

- 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 Gladman Developments for a partial award of costs against Aylesbury Vale District Council.
 - The inquiry was in connection with an appeal against the refusal of outline planning permission for up to 65 residential dwellings (including up to 30% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, vehicular access point from Chilton Road and associated ancillary works. All matters reserved with the exception of main site access.
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Costs application in relation to Appeal Ref: APP/J0405/W/16/3142524 Land adjacent to 80 Chilton Road, Long Crendon, Buckinghamshire (Cost Application B)

- 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 Aylesbury Vale District Council for a partial award of costs against Gladman Developments.
 - The inquiry was in connection with an appeal against the refusal of outline planning permission for up to 65 residential dwellings (including up to 30% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, vehicular access point from Chilton Road and associated ancillary works. All matters reserved with the exception of main site access.
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Decision

1. Cost applications A and B are allowed in the terms set out below.

Reasons

2. National Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has acted unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeals process. Claims can be procedural – relating to process; or substantive – relating to the issues arising from the merits of the appeal.
 3. The Guidance further sets out that the parties in planning appeals and other planning proceedings should meet their own expenses. Additionally the Guidance is clear that an application for costs will need to demonstrate how
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any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.

4. Both the appellant and the Council made their applications for an award of costs in writing.
5. Cost application A is made by the appellant for a partial award of costs on a procedural basis, in that due to the failure of the Council to notify a number of parties that had registered an interest in the appeal the Inquiry had to be adjourned. As a result the appellant, along with their advisors, incurred the expense of extra preparation time for their witnesses and Barrister.
6. Cost application B is made by the Council for a partial award of costs on both a substantive and procedural basis. Firstly for the costs of having to respond to the evidence presented by the appellant on Objectively Assessed Need (OAN) and the time taken at the Inquiry for dealing with the matter of OAN (substantive) and secondly for the late submission of a rebuttal proof on the matter of OAN which required the Council to request a short adjournment during the second week of the Inquiry to enable them to assess the information and to prevent the Council from being prejudiced (procedural).

Cost application A

7. The Council have accepted that they initially did not notify all interested parties of the date, time and place of the Inquiry as required by Rule 10 the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000. However, I agree with the Council that this was an administrative oversight and as soon as it was brought to their attention they took steps to correct the position. Furthermore, whilst I accept that the appellant did incur the costs of preparing for the Inquiry I agree with the Council that any preparatory work undertaken in October would have helped towards preparation for the Inquiry in December. As the Inquiry was adjourned prior to the scheduled opening no costs for attending the Inquiry were unnecessarily incurred.
8. However, I do accept from the evidence submitted that the appellant did have to undertake a limited amount of additional work as a result of the adjournment including the re-reading of documents; additional conference with Counsel and re-visiting the site to display updated site notices.
9. Consequently, I conclude that there was a procedural error which did result in the appellant incurring a limited unnecessary expense. For this reason and having regard to all other matters raised an award of costs for cost application A is justified.

Cost application B

10. The existence or not of five year housing land supply can be an important material consideration for housing related appeals as it can significantly affect the weight to be attached to existing and emerging development plan policy or, as in this case, the weight to be given to the benefits of any scheme when assessing the planning balance.
11. The Council, not the appellant, introduced the issue of five year housing land supply by providing an updated statement after the commencement of the appeal. The updated statement advocated that the Council considered, even

though they acknowledged that a number of the development plan policies were time expired, that the existence of a five year supply altered the planning balance by reducing the weight to be attributed to the benefits of the scheme. As a result, in the interests of fairness, I considered it appropriate that the Inquiry should be adjourned to enable the appellant the opportunity to respond to the Council's updated position

12. Where five year housing land supply is an issue I consider it reasonable for an appellant, as was the case here, to take the opportunity to test the Council's position and if they consider that a five year supply does not exist to expand their evidence to cover this matter in more detail.
13. The reference that no weight should be given to either set of figures resulted from an acknowledgement by one of the appellant's witnesses under cross examination that neither set of calculations had been tested through the Local Plan's process. As a result she agreed that if no weight was to be given to the Council's figure on the basis that they were untested she accepted that equally no weight should be given to the appellant's figures. Whilst I accept that this statement is technically correct it is only one possible scenario. I do not consider, given that the Council were advocating that weight should be attached to their untested figures, it unreasonable for the appellant, given they disagreed with the calculations, to have submitted evidence to support their position on this matter or advanced these arguments at the Inquiry.
14. In conclusion I therefore do not consider that the appellant acted unreasonably with regards to this matter and therefore the Council's costs in dealing with this issue were not, in my judgement, unnecessarily incurred.
15. I agree with the appellant that the submission of Dr Gomez's rebuttal in writing was useful to the Inquiry as it helped focus further the topics for discussion at the Inquiry and the time given over to Dr Gomez's evidence in chief was also reduced. However, I also agree with the Council that the appellant acted unreasonably with regards to the submission of this document as they could have advised both the Inspectorate and the Council of their intention to submit such a substantial document and the timescale for doing so prior to submission, in order that appropriate arrangements could be put in place to accommodate dealing with the additional evidence.
16. However, I consider that the extra expense that resulted from the late submission of this document for the Council is limited to the additional time required to appraise the rebuttal and the use of junior counsel on the morning of the 25 April 2017.
17. I note that the appellant considers that junior counsel would have been in attendance at any event however I note the Council's comments that this would mainly have been in a supporting role and therefore I consider that any additional cost resulting from her having to act up to cover for lead counsel has been unnecessarily incurred. Their availability to cover for lead counsel, while she briefed her witness and revised her questions to address the issues raised by Dr Gomez's rebuttal, was central in enabling the Inquiry to continue and limiting delay.
18. With regards to the decision to extend the Inquiry, when the revised timetable was discussed with the parties I made it very clear that longer sitting hours were available in order to make up the time lost by the adjournment and to

enable the Inquiry to end on the Friday. However, following discussions it was mutually agreed that it would be preferable so that the closings and costs applications could be given in writing to allow the parties time over the weekend to undertake this work. Therefore, whilst I accept that the Inquiry did sit for an additional day I do not consider that this was unreasonable as it was done with the agreement of the parties.

19. As a result I conclude that the appellant has acted unreasonably with regards to the late submission of Dr Gomez's rebuttal which resulted in extra expense for the Council for preparing for the Inquiry. However, this is limited to the costs associated with the additional preparation time and the use of junior counsel as cover on the 25 April 2017.

Costs Orders

Cost Application A

20. 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 Aylesbury Vale District Council shall pay Gladman Developments, the cost of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the adjournment of the Inquiry on the 4 October 2016.
21. The applicant is now invited to submit to Aylesbury Vale 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. In the event that the parties cannot agree an amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Office is enclosed.

Cost Application B

22. 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 Gladman Developments shall pay Aylesbury Vale District Council, the cost of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the additional preparation time required as a result of the late submission of Dr Gomez's proof and the use of junior counsel to enable the Inquiry to continue on the morning of the 25 April 2017 in the absence of lead counsel.
23. The applicant is now invited to submit to Gladman Developments, 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 an amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Office is enclosed.

Jo Dowling

INSPECTOR