

Costs Decision

Inquiry Held on 11 - 14 September 2017

Site visit made on 13 September 2017

by Kenneth Stone BSc Hons DipTP MRTPI

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

Decision date: 27 October 2017

Costs application in relation to Appeal Ref: APP/C1570/W/16/3166101 Land West of London Road, Newport, Essex

- 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 Sir Arthur Ellis Will Ltd for a partial award of costs against Uttlesford District Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the erection of 94 residential dwellings including flexible mixed use building (use class B1, D1 or D2); open space, landscaping and new access.
-

Decision

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

The submissions of the main parties

2. The appellant made an application for a partial award of costs against Uttlesford District Council (UDC) in respect of the Highway Safety issue and provided a written costs application.
3. The Council's response was provided in writing.

Reasons

4. 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.
5. The PPG advises that Councils could be at risk of an award of costs for withdrawing a reason for refusal (ID 16-047-20140306 bullet point 7) and for not reviewing its case promptly (ID 16-049-20140306 bullet point 13). The Council Members were provided with clear advice not only from its own officers but from the Essex County Council (ECC) as Highway Authority. Whilst Members hold a key role as those who determine applications they are required to have good reason for reaching their decisions and must be able to substantiate any concerns. If they were not satisfied with the advice or technical evidence before them it was open to the Members to defer the decision and seek further advice or technical evidence to be gathered. Even then however they must have good reason to do so and identify the areas that are of concern. Yet in this case there appears to have been no supportable

- evidential basis to counter the strong technical evidence, Transport Assessment, and advice from both the Council's own Officers and EEC officers..
6. In the circumstance of this case Highway safety and the technical evidence to address the matter is not simply a matter of opinion, as could be expressed on for example design matters, where disagreement maybe debatable or open to subjective opinion. Robust and supportable evidence needed to be brought forward to support or contest a proposal which was recommended for approval and which the available technical evidence supported. In this regard it was unreasonable for the Members to simply usurp that technical evidence with their opinion.
 7. Following the determination of the application and the submission of the appeal the Council were required to promptly consider the reasons for refusal and the case that could be mounted. Given the timescales involved the matter could have been reviewed more effectively and efficiently. I have been provided with no good reason why this wasn't the case. In that review I accept that once further advice is received this needs to be reconsidered by Members but that does not justify the delay in reaching a conclusion and advising the appellant that the Council did not propose to defend that reason for refusal. I find this also to be unreasonable behaviour.
 8. The Council's decision to withdraw its reason for refusal suggests to me an acceptance that there was insufficient evidence to substantiate the reason for refusal when taking its decision in the first place, as no new information was sought or provided. This is a further indication of unreasonable behaviour (ID 16-049-20140306 bullet point 2).
 9. Whilst the actions of the Council in the determination and in not reviewing its case promptly are matters of unreasonable behaviour an award of costs only follows if that unreasonable behaviour leads to unnecessary or wasted expense being incurred. With Newport Parish Council's (NPC) appointment as a rule 6(6) party they became a main party to the appeal proceedings. A significant aspect of its case related to highway matters including issues of highway safety. I agree with the Council that much of Mr Bass' evidence was directed towards addressing the issues raised in the NPC evidence. In my view his evidence was necessary to refute the case of NPC and it was not therefore unnecessary or wasted expense in its production. Whilst UDC did not cross examine Mr Bass, NPC did and it maintained its opposition to the proposal on highway grounds. It was therefore not unnecessary or wasted time and expense for Mr Bass to appear at the Inquiry.
 10. The appellant suggests that it could have adopted a similar position to the other issues raised by NPC and on which it did not instruct expert witnesses. Whilst that is true that was a matter for the appellant and how to run its case, particularly so when the Council withdrew the reason for refusal and indicated it would not cross examine. The appellant saw the benefit in Mr Bass providing evidence and therefore put him before the Inquiry. The appellant was aware of the Council's position before the production of proofs but maintained its position to provide Mr Bass as a witness and present a proof. I am not persuaded that it was the Council's unreasonable behaviour in relation to the highway matter that led to the appellant providing this witness.
 11. I conclude that whilst there was unreasonable behaviour on behalf of UDC this did not lead to unnecessary or wasted expense being incurred by the appellant.

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Kenneth Stone

INSPECTOR