The Planning Inspectorate

Costs Decision

Inquiry Held on 27 – 29 March 2018

Site visit made on 4 April 2018

by Helen Hockenhull BA(Hons) B.Pl MRTPI

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

Decision date: 29 May 2018

Costs application in relation to Appeal Ref: APP/Q3115/W/17/3186858
Land to the East of Benson Lane, Crowmarsh Gifford, Wallingford OX10 8ED

- 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 Bloor Homes and Hallam Land Management for a full award of costs against South Oxfordshire District Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for up to 150 dwellings together with associated access, public open space, landscaping and amenity areas.

Decision

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

Reasons

2. 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. Claims can be procedural, relating to process; or substantive, relating to the issues arising from the merits of the appeal.

3. In the interests of expediency at the Inquiry, the application was made in writing but not presented orally. The Council's response was made in the same way at the event. With my agreement, the applicant submitted final comments in writing after the close of the Inquiry.

4. It is submitted that the Council find the appeal proposal acceptable and present no evidence against the development. They have therefore acted unreasonably in delaying a proposal which should have been granted planning permission. It is argued that the Council should have reviewed their case promptly following the appeal being lodged as part of sensible ongoing case management. The applicant brings my attention to a costs decision for a site in Bury St Edmunds[1] to support their application.

5. It is important to consider the chronology of events in this case. The planning application was refused by the Council's Planning Committee against a positive recommendation by Officers on 4 April 2017. The appeal was lodged on

[1] APP/E3525/W/17/3183051

29 September 2017. In their Statement of Case dated 5 January 2018, the Council outlined its arguments and the case it would present at the Inquiry. Subsequently the Council reviewed its position and informed the applicant on 16 February 2018 that it no longer intended to defend the reasons for refusal. This was approximately 10 days before the Proofs of Evidence were due to be submitted.

6. I note that in deciding not to defend its case, the Council reconsidered the weighted balance. Whilst recognising the appeal scheme would conflict with development plan policy and result in a degree of harm, the Council determined this harm no longer significantly or demonstrably outweighed the benefits of the proposal. However this reassessment occurred at a very late stage, over a month after the submission of their Statement of Case, and close to the submission of proofs of evidence. The applicant would have already substantially prepared his evidence by this time. This reassessment should have taken place much earlier as part of ongoing case management, ideally when the appeal had been lodged. The failure to do so amounts to unreasonable behaviour.

7. I recognise that it is good practice for parties to try to minimise the areas of dispute between them in order to reduce inquiry time, achieve a more efficient appeal process and reduce costs. However the PPG sets out that the aim of the costs regime is, amongst other things, to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal that stand up to scrutiny on the planning merits of the case. The Council now accepts that, subject to an appropriate s106 agreement, planning permission should have been granted. In refusing the original planning application, and having regard to my finding that the appeal should be allowed, the Council were preventing a development that should clearly have been permitted.

8. I acknowledge that the Council have continued communication with the applicant at every stage and discussed the approach to housing land supply in order to ensure that the evidence to be presented at the Inquiry was proportionate to the case. Whilst this may have helped to reduce Inquiry time, had the planning application been approved in the first place, an Inquiry would not have been necessary. I conclude that unreasonable behaviour on behalf of the Council has been demonstrated.

9. I must now go on to consider whether this unreasonable behaviour has incurred unnecessary costs for the applicant. The Council have argued that in the event that I find unreasonable behaviour had occurred, then a partial award of costs, not a full award, is justified. This is because there were two Rule 6 parties participating in the Inquiry raising a wide range of issues. These included air quality and transport, matters on which the Council had raised no objection and which did not form part of the Council's case. Therefore the applicant would have incurred the cost of producing detailed evidence in respect of these matters in any event.

10. However the key point here is that if the Council had granted planning permission in the first place, the appeal would not have proceeded and the applicant would not have had to incur the cost of preparing any evidence at all. I therefore conclude that a full award of costs is justified.

11. In respect of housing land supply, the Council contend that it was not proportionate or necessary to present such evidence as there was agreement that a 5 year housing land supply could not be demonstrated and that the benefit of the appeal scheme in contributing to the supply of housing should be given significant weight. Bearing in mind the timing of the Council's withdrawal of its case, the applicant would have already prepared evidence on this matter. Whilst I acknowledge that evidence was presented in a proportionate way at the Inquiry, resulting in a reduction in sitting time, the preparation of such evidence constituted unnecessary expense for the applicant which could have been avoided if the Council had not acted unreasonably.

12. I accept the Council's argument that costs relating to the preparation of the section 106 agreement itself would have been incurred irrespective of the Council's position. However any costs incurred by the applicant in preparing evidence relating to the justification of the obligations to mitigate the impact of the development would still have been incurred during the appeal process. This expense should therefore be included in the cost award.

13. I have noted the Cost Decision referred to me by the applicant where similarly a Council had decided not to defend an appeal. I am not fully aware of the circumstances around this case and the background to the Council's position. This was a case where the Council had failed to determine the application in the prescribed period. This leads me to the view that there were significant differences with this appeal. I have therefore considered this application on the merits of the case.

14. I am aware that the applicant has submitted a duplicate planning application and has informed the Council that if this is approved, any award of costs would not be pursued. This is not a matter on which I am required to comment further.

Conclusion

15. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. For the reasons given above, a full award of costs is justified.

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 South Oxfordshire District Council shall pay to Bloor Homes and Hallam Land Management, 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.

17. The applicant is now invited to submit to South Oxfordshire 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.

Helen Hockenhull

INSPECTOR