
Costs Decision

Inquiry Held between 13 and 19 August 2019

Site visits made on 13 and 19 August 2019

by Mark Dakeyne BA (Hons) MRTPI

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

Decision date: 1st October 2019

Costs application in relation to Appeal Ref: APP/C1570/W/19/3226302 Land off Station Road, Flitch Green, Essex CM6 3HF

- 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 Uttlesford District Council for a partial award of costs against Gladman Developments Limited and Messrs Hawkes.
 - The inquiry was in connection with an appeal against the refusal of outline planning permission for the erection of up to 240 dwellings with public open space, landscaping, and sustainable drainage system (SuDS) and vehicular access point from Station Road. All matters reserved except for means of access.
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Decision

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

The submissions for Uttlesford District Council

2. The costs application was submitted in writing at the inquiry. The Council sought a partial award for the costs pertaining to dealing with ecology matters at and after the inquiry. The main points in the written application were that the appellants submitted and progressed the appeal in advance of conducting further protected species surveys recommended by their own ecological appraisal and the absence of which formed one of the reasons for refusal. This approach appeared to represent the modus operandi of the appellants.
3. The following additional points were made orally. The additional surveys carried out during the appeal process were not just a matter of updating information but about providing the evidence that was required in the first place. The legal position that surveys were necessary for species protected under European law is clear. Planning Practice Guidance (PPG) explicitly refers to unreasonable behaviour including only supplying relevant information at appeal stage when it was requested, but not provided, at application stage.

The response by Gladman Developments Limited and Messrs Hawkes

4. The response was made in writing at the inquiry. The main points in the written response were that it was desirable for up-to-date information to be provided to inform the decision-maker. Moreover, the appellants explained their approach as early as 3 July 2019. The suggestion that the Inspector accept further ecological information in early September was without prejudice to the appellants' primary case, was designed to narrow the issues in dispute and did not cause the Council any prejudice, all in the context of the approach required as a result of the Rosewell Review.

Reasons

5. The 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.
6. On the face of it, the appellants should have provided surveys of protected species, including bats and dormice, at application stage as recommended by their ecological consultants. The failure to do so appears to fall foul of the type of unreasonable behaviour referred to in the PPG that may give rise to a procedural award against appellants.
7. Ideally the surveys should have been in place when the application was submitted. That said, this would have resulted in the application not being submitted until September 2019 at the earliest. Alternatively, the surveys could have been provided during the consideration of the application following the holding objection from Essex County Council's Ecological Consultant.
8. However, the application was refused permission in March 2019, so the appellants did not have the opportunity to conduct the full suite of bat and dormice surveys before it was determined. They could have then delayed the appeal until dormice surveys had been conducted in the most important months of August and September, albeit that such an approach would have resulted in the appeal being submitted very close to the 6-month deadline.
9. The appellants instead took the decision to make the appeal with the intention of conducting the surveys during the Summer and early Autumn of 2019. They would have anticipated that the appeal process would be protracted, and an inquiry would not be held until after that date on the basis that appeals heard by public inquiry had been taking on average almost a year to decide.
10. However, following the Rosewell Review, the appeal was progressed via the accelerated inquiry procedure. It is fair to say that this caught the main parties on the hop. In terms of the appellants, they accepted that the final dormice surveys would not be conducted until just before and shortly after the inquiry even though their primary case was that I had adequate information to establish that dormice were unlikely to be present. This was explained to the Council in early July.
11. At the inquiry the appellants restated their position. I agreed as part of the round table discussion on ecological matters, that, in order to seek to further narrow the issues in dispute, the final dormice survey information could be provided in early September and that my decision would be based on this up-to-date evidence. I saw this as a pragmatic way forward.
12. It is important not to weaken the objective that relevant information should be provided at application stage. However, the particular circumstances in this case as explained above, including the imposition of the accelerated appeal procedure, lead me to the conclusion that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Mark Dakeyne

INSPECTOR