



Costs Decision

Site visit made on 25 July 2019

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2019

Costs applications in relation to Appeal Ref: APP/D5120/W/19/3226872 Mill Meadows, Bexley High Street, Bexley DA5 1JX

- The applications are 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 applications are made by the Council of the London Borough of Bexley for a partial award of costs against Mr Derek & David Ovenell (Craymill Leisure Ltd).
 - The appeal was against the refusal of planning permission for the provision of one all-weather hockey pitch, the removal of redundant buildings and construction of nine new residential units comprising 3 x 3 bed, 1 x 4 bed and 5 x 2 bed dwellings.
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Decision

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

Preliminary Matter

2. The local planning authority (LPA) has made two separate applications, both for a partial award of costs, against the appellant. For conciseness, and as there is overlap in the matters raised, I have considered both applications together.

Reasons

3. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
4. The PPG advises that appellants are at risk of an award of costs for introducing fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen.
5. The appellant's updated Ecological Assessment (EA) was submitted with their final comments, rather than with their original appeal submission. The appellant states that, due to seasonal constraints on the carrying out of species surveys which form part of that EA, those surveys could not have been carried out within the 6 month deadline within which they had to make their appeal following the application's refusal in October 2018. From the evidence before me, I have no reason to doubt that was the case, or to believe that the surveys were not carried out and provided as soon as was reasonably possible.
6. The LPA states that, as ecology had formed the reason for refusal of a previous application several years ago, the appellant should have been aware of the need for an ecological survey. However, it is clear from the submissions before

me that the appellant did submit an EA as part of the application which forms the basis of the current appeal. Whilst the LPA found that EA to be insufficient, I cannot be certain from the evidence before me whether it communicated its specific concerns in that regard to the appellant, or whether the appellant was asked, or given the opportunity, to provide further information to address those concerns before the LPA made its decision.

7. Therefore, on the basis of the evidence before me, I consider that it was not unreasonable for the appellant, having reviewed their case in the light of the LPA's reasons for refusal, to seek to provide that further information at appeal stage. Given the seasonal restrictions on the carrying out of those surveys, I consider that they could not have been provided within the 6 month appeal deadline, and that the late submission of the additional EA does not amount to unreasonable behaviour in this case.
8. The PPG advises that appellants are required to behave reasonably in relation to procedural matters on the appeal by complying with the requirements and deadlines of the appeals process, and that appellants are at risk of an award of costs for delay in providing information or other failure to adhere to deadlines. As set out in the Planning Inspectorate Procedural Guide: Planning Appeals – England, appellants must send complete appeals and supporting documents to the Planning Inspectorate so that they are received within the relevant time limits and, at the same time they must send a copy to the LPA.
9. However, it has come to light on two separate occasions during the course of the appeal that some documents sent to the Planning Inspectorate with the appellant's original appeal submission were not also copied to the LPA at that time. Whilst the LPA could perhaps have checked to ensure that the documents listed on the appeal form corresponded with those it had received, the onus to ensure that such documents are provided to the LPA, and thus comply with the requirements and deadlines of the appeals process, is on the appellant.
10. The appellant's failure to do so in this case appears to have been a genuine error, and I have no reason to believe that they sought to deliberately conceal information from the LPA. However, the appellant's failure to copy those documents to the LPA and thus to comply with the requirements and deadlines of the appeal process, leading to significant delay in the processing of this appeal, amounts to unreasonable behaviour in the terms of the PPG.
11. Nonetheless, I am not persuaded that the LPA has incurred significant additional time in preparing multiple statements to address those submissions compared with the time that would have been taken to address them all in a single statement, had they been submitted together at the start. Therefore, I find that the appellant's actions have not led the LPA to incur unnecessary or wasted expense in preparing its statements or other representations in response to those submissions.
12. The omission of the appellant's Flood Risk Sequential Test Assessment (STA) from the documents sent to the LPA with their appeal form came to light at the same time as the appellant submitted their additional EA. The LPA re-notified consultees and interested parties with regard to both of those documents at that stage. For the reasons given I have found that the submission of the EA at that stage was not unreasonable. Accordingly, it follows that the LPA was not put to unnecessary or wasted expense as a result of the re-notification process associated with the additional EA. As the STA was publicised as part of that

same re-notification process, the LPA has not incurred additional expense in having to re-notify interested parties separately with regard to that document, despite it having been omitted from the appellant's original submission.

13. However, several weeks later, it came to light that the appellant had not sent a copy of their statement of case to the LPA either. As a core appeal document, it was necessary for the LPA to re-notify interested parties of that further submission. The need for that re-notification arose solely as a result of the appellant's unreasonable behaviour in not copying that core document to the LPA with its original appeal submission, and has led to the Council incurring unnecessary and wasted expense as a result of that second re-notification process which would not have been incurred had that document been provided to the LPA within the relevant time limits.
14. Therefore, in awarding costs on this matter, those costs shall be limited solely to those incurred by the Council in carrying out the second re-notification process. They shall not extend to the costs of any previous notification or re-notification process, or to the costs incurred by the Council in producing its first or any subsequent appeal statements or submissions.

Conclusion

15. The appellant's failure to send a copy of all of submission documents to the LPA at the time the appeal was made was unreasonable behaviour, which has caused the LPA to incur unnecessary and wasted expense in the second re-notification process. I conclude that a partial award of costs is appropriate with regard to that matter. However, for the reasons given, that award is limited to the expense incurred in re-notifying interested parties with regard to the appellant's Statement of Case, as set out in the revised appeal timetable issued by the Planning Inspectorate on 22 August 2019.

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 Derek & David Ovenell (Craymill Leisure Ltd) shall pay to the Council of the London Borough of Bexley the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in re-notifying consultees and other interested parties with regard to the appellant's Statement of Case, as set out in the revised appeal timetable issued by the Planning Inspectorate by email on 22 August 2019.
17. Those costs shall not extend to any costs incurred in the re-notification of consultees and other interested parties with regard to the appellant's Flood Risk Sequential Test Assessment or Ecological Assessment, as set out in the revised timetable issued by the Planning Inspectorate by email on 15 July 2019. Nor shall they extend to any costs incurred in the preparation of any appeal statements, submissions or representations by the Council.
18. The applicant is now invited to submit to Mr Derek & David Ovenell (Craymill Leisure Ltd), to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Jillian Rann
INSPECTOR