The Planning Inspectorate

Costs Report to the Secretary of State for Housing, Communities and Local Government

by Julia Gregory BSc(Hons) BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Date: 23 August 2019

Town and Country Planning Act 1990

Nuneaton and Bedworth Borough Council

The Long Shoot, Land North of Greendale Road, Nuneaton CV11 6EU

Appeal by

Bellway Homes West Midlands Limited

Inquiry held on 25, 26 and 27 June 2019

The Long Shoot, Land North of Greendale Road, Nuneaton CV11 6EU

File Ref: APP/W3710/W/18/3217924

Costs Application 1

File Ref: APP/W3710/W/18/3217924
The Long Shoot, Land North of Greendale Road, Nuneaton CV11 6EU

- The application is made under the Town and Country Planning Act 1990, sections 78 and 320, and the Local Government Act 1972, section 250(5).
- The application is made by Bellway Homes West Midlands Limited for a partial award of costs against Nuneaton & Bedworth Borough Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for the erection of 75 dwellings including public open space, associated earthworks to facilitate surface water drainage, landscaping, car parking and other ancillary works.

Summary of Recommendation: The application for an award of costs be refused.

Costs Application 2

File Ref: APP/W3710/W/18/3217924
The Long Shoot, Land North of Greendale Road, Nuneaton CV11 6EU

- The application is made under the Town and Country Planning Act 1990, sections 78 and 320, and the Local Government Act 1972, section 250(5).
- The application is made by Bellway Homes West Midlands Limited for a full/partial award of costs against the Rule 6 Party comprising 6 local residents in Callendar Close and Gloucester Close: Mr Keith Kondakor, Mrs Michele Kondakor, Melanie Allen, Peter Rogers, Jo Johnson, and Steven Nestoruk.
- The inquiry was in connection with an appeal against the refusal of planning permission for the erection of 75 dwellings including public open space, associated earthworks to facilitate surface water drainage, landscaping, car parking and other ancillary works.

Summary of Recommendation: The application for an award of costs be refused.

Preliminary matters

1. Although the costs applications were described as full costs against the Rule 6 Party and partial costs against the Council, it was specified at the Inquiry that costs against the Council were claimed up until the date they withdrew from defending the appeal. The costs against the Rule 6 Party would then be all those costs following the withdrawal of the Council's defence, if there were partial costs awarded against the Council.

The Submissions for the appellant against the Council

2. The decision to refuse the application in November 2018 prevented and delayed development that should clearly be permitted, having regard to the emerging LP. There were no objections from statutory consultees and the scheme complied with the Framework. Saved policies from the LP 2006 were out of date at the time the decision was taken as there was no demonstrable 5 -year housing land supply. The development is patently sustainable. There was no explanation of members' disagreement with their officers. Members did not consider the benefits but were rather over-fixated on the misguided idea of over-provision of housing.

No actual conclusion was reached as to whether the perceived harm would be outweighed by the public benefits.

3. There was no explanation at the Inquiry about Members' decision to refuse the subsequent application which was against officer's recommendation. There has been no objection from any statutory consultee. It was unreasonable for the committee to withdraw the original reason for refusal and then on the same day for the committee to refuse the resubmitted application.

The Submissions for the appellant against the Rule 6 Party

4. The appeal could have been dealt with by way of written representations or an informal Hearing after the Council withdrew its case. It was the firm and consistent view of the Rule 6 Party that an Inquiry was necessary. The Rule 6 Party should have accepted the invitation from the Planning Inspectorate to change the appeal to written representations.

5. Considering the facts of the case, the fact that the Council did not present evidence, and the relatively straightforward nature of the case, it would have been the appropriate thing to do. Councillor Kondakor is a seasoned spectator and participator in the planning process and so knows what he is doing. He has tried his best to frustrate the process through the proper channels at Committee. When the Council withdrew, he should have seen sense, but he chose to dig in through the Rule 6 Party process, without any expert evidence.

6. The appeal has now cost a considerable amount of money and wasted expenses, causing significant delay and frustrating the approval of what is otherwise a straightforward application which ought to have been approved at the outset. All the evidence presented by the Rule 6 Party is anecdotal material, previously rehearsed before the Council, considered fully, and ultimately rejected. To have delayed matters further by allowing this appeal to drag on the way that it has, without any real value is unacceptable.

7. There has been no evidence presented which could be said to trouble the Inspector in any way. The points being made are not to discourage the democratic right to participate. However, local concerns were considered fully previously and there is little else which could be done to allay the concerns which they continue to hold. There have been no judicial review challenges of any of the officer reports and recommendations or the evidence base behind them. There have been no expert reports produced to counter any presented by the appellant.

Response by the Council

8. After refusing the appeal application, the Council reflected upon the reason for refusal and concluded that it was unsustainable. This decision was taken over three months before the Inquiry and prior to the requirement for submission of any substantive evidence to the Inquiry, with the exception of the statement of case.

9. Whilst it is conceded that the initial decision will have triggered the costs application, it can only be up to 12 March 2019 when the reason for refusal was withdrawn. From that point on, liability for costs cannot rest with the Council. Indeed, when the Planning Inspectorate contacted the relevant parties on 8 May 2019 to ask whether the Inquiry was still necessary, the Council responded the

same day to say that an Inquiry was not necessary. This was contrary to the response from both the appellant and the Rule 6 Party who both confirmed that an Inquiry was still necessary.

10. Planning Practice Guidance does say that Councils should continually review appeals and, where necessary, take appropriate action. Credit should be given for this and, at best, the appellant would only be entitled to a partial award of costs against the Council up to the point where the reason was withdrawn.

Response by the Rule 6 Party

11. It is not correct that the Rule 6 Party forced the Inquiry. The appellant had proposed a deferment of the Inquiry. The Rule 6 Party was happy to support that move as the outcome of the second application would have been determined and the status of the Borough Plan known before the submission of proofs.

12. Both the appellant and Rule 6 Party were asked if the Inquiry should take place and both said it should. The Rule 6 Party believes that they have not behaved in an unreasonable manner. Had the appellant not submitted a second application the Inquiry could have taken place at a much earlier date. This action by the appellant delayed the Inquiry by a far greater extent than any alleged action by the Rule 6 Party.

13. The Rule 6 Party has behaved reasonably to support an efficient and timely process by submitting the required documents and information in accordance with the timetable set by the Planning Inspectorate.

14. The Planning Inspectorate considered the Inquiry still necessary due to the imminent adoption of the new local plan and the Rule 6 Party wanting to take part in proceedings. It was not solely due to the Rule 6 Party wanting to take part. Preparation for the Inquiry was necessary given that the inspector stated that the Inquiry was necessary as previously stated.

15. The second planning application was almost identical to the first and cannot be considered a revised planning application. The appellant refused an invitation to open direct dialogue. On reviewing the evidence we believe that the Inspector will agree that the Rule 6 Party is not liable for costs in regard to procedural matters or in regard to behaviour or substantive aspects of the appeal. At every stage they have done their best to make their case, following regulations and with respect for the planning process.

16. They cannot be responsible for the actions of the Council withdrawing their reason for refusal, the Planning Committee for voting to refuse the application and not attending the Inquiry, or the MP contacting the Secretary of State to request that the application be called in.

17. The Rule 6 Party totally refutes the allegation that they failed to accept the invitation from the Planning Inspectorate to change to written representations for this appeal. There is no evidence that any such invitation was issued to the Rule 6 Party. The Rule 6 Party was simply asked to comment if they considered that the Inquiry was still necessary. The response of the Rule 6 Party was that it was still necessary, as was the response of the appellant.

18. The Rule 6 Party does not have the option of engaging experts. The Rule 6 Party guidelines do not state that they have to be experts to give evidence but can

simply have local knowledge. As lay people the Rule 6 Party was exercising the democratic right to express concerns in response to the planning application that they consider detrimental to the local area.

19. The Planning Committee said they agreed with their viewpoint by refusing the application twice. They have the right to be part of the process and that should not depend on them being able to find and fund expensive expert witnesses or barristers. The right of the Rule 6 Party to take part in the process was stated by the Planning Inspectorate.

20. The Rule 6 Party took part to represent the views and objections of the community as the Council were not willing to do so. Personal correspondence between Councillor Kondakor and other parties cannot be taken into account as part of the application for costs against the Rule 6 Party. The evidence the Rule 6 Party presented was based on in-depth local knowledge in line with Rule 6 Party guidelines. The costs sanction would discourage participation in the appeals process. Anecdotal evidence is still evidence and this has not been pre-rehearsed in front of anyone.

21. The Rule 6 Party did add real value as it was clearly demonstrated that there were inaccuracies in some of the planning application reports produced by experts on behalf of the appellant, for instance the Air Quality Management report. The Rule 6 Party agrees that local concerns were fully considered by members of the Planning Committee. However, the appellant has not considered local concerns and this has been shown by their submission of the second almost identical planning application.

22. Although Ms Farrington for the appellant was deemed an expert by way of qualifications and experience, she knew the answers to very few if any of the questions that were put by the Rule 6 Party. She was unaware that there was not a Parish Council for the area as stated in her report.

23. The Rule 6 party's aim was to ensure that the Inspector had both the Council approved reports and also the expert local knowledge of their flaws, which they have done. The Rule 6 Party do not expect to agree with the appellant but do expect the appellant to address serious concerns. Failure of the Council and the Planning Committee to participate in the appeal put a burden on the local community to form a Rule 6 Party to defend the decision of the Planning Committee in the appeal.

24. During the proceedings it has been suggested that residents were wrong to contact their MP. It is their right to request his assistance. Mr Kondakor cannot be held to account for the actions of a resident who acted on his/her own volition or the actions of the local MP.

Conclusions

25. Planning Practice Guidance 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. Planning Practice Guidance identifies that the aim of the costs regime is to:

- encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case;
- encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay; and
- discourage unnecessary appeals by encouraging all parties to consider a revised planning application which meets reasonable local objections.

26. At the time of the decision, the development was contrary to saved policies of the 2006 Local Plan (LP). The new LP was still being examined and the 2006 LP was out of date. The Framework and the emerging plan would have been material considerations that might have indicated that the development should have been determined otherwise than in accordance with the 2006 local plan. Given that the 2006 LP had been superseded by the time of the Inquiry, and the policy context for the determination of the appeal was quite different, it has not been necessary for me to reach conclusions in my report as if recommendations were being made then.

27. Nonetheless, by the time the Council determined the subsequent similar application, the Council was about to adopt the new LP and it should have been clear to the Council that subject to a satisfactory UU and conditions, the development would have been in accord with a LP that they were about to adopt. Whilst LP adoption was not a foregone conclusion, I cannot see that the Council would have continued with modifications recommended to the plan if the Council was not going to then adopt the LP.

28. If the Council had granted planning permission, that would have been consistent with their decision not to defend the appeal. That would also have rendered the Inquiry unnecessary since the appellant would have implemented the alternative similar scheme and withdrawn the appeal.

29. However, that would have been subject to a satisfactory planning obligation. The UU has various inadequacies. That has resulted in a recommendation to the Secretary of State that the appeal be dismissed. It may be that the Council has more information than is before me that may have satisfied them about compliance with the CIL regulations, and the technical issues might have been resolved. Nonetheless, I cannot be sure on those points. For these reasons alone, I conclude that the appeal was not unnecessary and therefore that no award of costs is justified against the Council.

30. Turning now to the application against the Rule 6 Party. Although they include a local Councillor, these individuals are appearing as local residents. Even if they had not been a Rule 6 Party, I would have still allowed residents to give evidence and to ask questions of the appellant's witness. This is because the Council was not defending the appeal. It is an approach that I would have been entitled to take and would have been in the interests of natural justice.

31. Whilst the residents were not experts, they highlighted matters in evidence that were not in any way frivolous and were based on local and personal knowledge. Whilst they lacked knowledge on certain points, the same could be said of the

appellant's witness who had not been involved in negotiations regarding the application itself and was not an expert on some of the specialist matters and so could not answer many of the detailed questions put to her by the Rule 6 Party.

32. There was no unreasonable behaviour on their part in respect of their cases or procedurally at or before the Inquiry. Public participation is encouraged in the planning system and their participation at the event helped me to understand the representations that had been made earlier in writing. That the Secretary of State chose to recover the appeal is not a matter in the control of the Rule 6 Party.

33. The appellant initially requested that the appeal be heard at Inquiry and the email dated 13 May 2019 specified that the appellant considered that a Public Inquiry was still necessary, following the Council's refusal of the second application. I cannot be sure that the Rule 6 Party understood that the Planning Inspectorate's correspondence was intended to ask whether it should be changed to a Hearing or by written representations because it was not written explicitly in those terms. Also, as I have recommended that the appeal be dismissed, the appeal was not unnecessary.

34. For the reasons given, I consider that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated against either the Council or the Rule 6 Party and I therefore recommend that awards of costs are not justified.

Julia Gregory

Inspector