
Costs Decision

Hearing Held on 3 September 2019

Site visit made on 3 September 2019

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 November 2019

Costs application in relation to Appeal Ref: APP/C1760/W/19/3227205 Land at Oakcutts, Old Stockbridge Road, Kentsboro, Middle Wallop, Stockbridge SO20 8DZ

- The application is 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 application is made by Test Valley Borough Council for an award of costs against Mr Adrian Burford.
 - The hearing was in connection with an appeal against the refusal of the Council to grant planning permission for what was described as retention of affordable dwellinghouse.
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Decision

1. The application for an award of partial costs is allowed.
2. The application for an award of full costs is dismissed.

Procedural matters

3. The application was made in writing by the Council, and Mr Adrian Burford (the appellant) made his response orally at the Hearing.
4. The Council has indicated that it wishes to apply for either full or partial awards of its costs as alternatives.
5. At the Hearing the Council withdrew its reference to matters relating the European sites made within its costs application.

Reasons

6. 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.
7. The Council claims that the appellant acted unreasonably on both procedural and substantive grounds which are described as:
 - a) resistance to, or lack of co-operation with the Council in providing information, and discussing the application or appeal;
 - b) delay in providing information;
 - c) not completing a timely statement of common ground or not agreeing factual matters common to witnesses of both principal parties;

- d) proceeding to appeal when the development was clearly not in accordance with the development plan, and no other material considerations such as national planning policy have been advanced that indicate the decision should have been made otherwise; and advancing other material considerations with inadequate supporting evidence;
 - e) proceeding to appeal despite a recent appeal decision in respect of very similar development on substantially the same site where an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period; and
 - f) failure to withdraw the appeal following publication of the Council's statement of case.
8. Grounds (a) and (b) overlap, whilst all of grounds (a) – (c) are chiefly concerned with email communication between the parties.
9. With regard to grounds (a) and (b), the Council has provided an email trail. This shows that the Council sent a series of queries to the appellant on 1 May 2019, shortly after the appeal was lodged. This only received a detailed response on 28 June 2019. This was a long delay. Furthermore, the Council should not have needed to seek supporting documents from the appellant, given that that an appellant is required to copy their appeal to the relevant local planning authority when it is lodged. Taking into account the 18 June 2019 start date of the appeal, the delay reduced the time available to Council to produce its appeal statement. This was unreasonable. Except with regard to the costs involved in chasing information by email however, no unnecessary or wasted expense is likely to have arisen as a result.
10. The Council subsequently sought to obtain supporting documents which the appellant stated would be provided via an email link, but without success. Though the appellant states that some of these documents were already in the possession of the Council, the continued requirement to seek documents from the appellant would again have had some impact on the Council's ability to produce its appeal statement. Whilst again unreasonable, except with regard to chasing information by email, unnecessary or wasted expense is again unlikely to have occurred.
11. With regard to ground (c), having considered the draft SoCG provided by the appellant with the appeal, the Council returned a modified copy on 24 April 2019. Subsequent emails sent over the course of the following months show that the Council chased a response in an effort to reach an agreement on the SoCG, but none was forthcoming. Consequently, no agreed SoCG was provided according to schedule, or indeed prior to the Hearing.
12. Whilst the appellant brought a SoCG to the Hearing itself, the Council had not seen it, therefore it was not agreed, or indeed useful. This prevented the issues relevant to the appeal being properly focused prior to the Hearing. Whilst unreasonable, it should nonetheless have been clear to both parties where points of dispute lay, and thus additional work on providing the Council's statement of case should not have been necessary. Again therefore, except with regard to chasing a response by email, unnecessary or wasted expense is unlikely to have occurred.

13. I note that the Council additionally sought to engage the appellant in refinement of the draft Unilateral Undertaking (UU) both before and after submission of its statement of case. Again, the appellant was unresponsive until a very late stage. This was unreasonable. Except with regard to clearly contested matters however, the appellant ultimately appears to have accepted the Council's suggestions. Little if any time was therefore demonstrably required to review the resulting revised draft UU over and above that which would otherwise have been the case had it been shown to Council sooner. As such, beyond sending emails chasing a response, unnecessary or wasted expense did not demonstrably occur.
14. I note that with regard to grounds (a) – (c) the appellant seeks to attribute the poor level of communication to personal circumstances. I accept that these may have had some bearing, but cannot be considered to wholly explain the difficulties encountered by the Council across several months, or excuse the fact that no clear explanation was provided to the Council. This is notwithstanding allusions made to personal circumstances within emails dated 25 and 28 June 2019. Had this occurred, this might indeed have avoided time wasted in sending emails chasing information and responses from the appellant.
15. With regard to ground (d), the basis of the appellant's case was that the scheme was in fact in accordance with the development plan, principally on grounds that it was rural exception affordable housing. Information was provided to substantiate both this argument, and with regard to matters of highways safety, and character and appearance, which each formed reasons for refusal. Additionally, the appellant advanced material considerations relating to human rights and equalities. Whilst the parties dispute the adequacy of the supporting evidence in this regard, I am satisfied that it was sufficient for these matters to be taken into account and for me to reach a decision on them. Notwithstanding my overall decision to dismiss the appeal, I do not therefore consider that the appellant acted unreasonably on ground (d) in proceeding to appeal.
16. With regard to ground (e), a scheme for housing development was dismissed on the site in appeal reference APP/C1760/A/14/2222806 (the previous appeal). The cases are similar, and there are indeed areas of commonality in the conclusions I have drawn in my main Decision, and those of the previous Inspector. The appellant however could, and indeed did draw upon subsequent case law of some relevance to the appeal. Furthermore, unlike the previous appeal, the current appeal scheme was presented as involving affordable housing. Again therefore, the appellant did not act unreasonably in proceeding to appeal.
17. With regard to ground (f), the choice to continue with the appeal following production of the Council's statement was one for the appellant, which, with regard to the substantive matters (d) and (e) above, was not unreasonably made.

Conclusion

18. For the reasons set out above, I find that the appellant acted unreasonably on procedural grounds (a) – (c) as outlined above, and that this caused the Council a presumably minor level of unnecessary and wasted expense in sending emails chasing information and responses from the appellant with

regard to evidence, the SoCG, and UU. On grounds (d) – (f) I find that the appellant did not act unreasonably.

19. I conclude therefore that the Council's full claim for costs must fail, but that its partial claim succeeds.

Costs Order

20. 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 Adrian Burford shall pay to Test Valley Borough Council, the partial costs of the appeal proceedings described in the heading of this decision.
21. The applicant is now invited to submit to Mr Adrian Burford to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Benjamin Webb

INSPECTOR