
Costs Decisions

Inquiry Held on 14-17 January 2020

Site visit made on 15 January 2020

by Mike Hayden BSc DipTP MRTPI

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

Decision date: 21 February 2020

Costs applications in relation to Appeal Ref: APP/Q3820/W/19/3236721 Land at Steers Lane, Forge Wood, Pound Hill, Crawley, West Sussex

- The applications are made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - Applications have been made by Danescroft (RLP Crawley) LLP for a full award of costs against Crawley Borough Council and by the Council for a full or partial award of costs against Danescroft (RLP Crawley) LLP.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for outline planning permission for the erection of up to 185 residential dwellings, with the associated vehicular and pedestrian access via Steers Lane, car parking and cycle storage and landscaping.
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Decision

1. Both applications for the award of costs are refused.

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (PPG) is clear that costs may only be awarded against a party where that party 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 the process; or substantive – relating to the issues arising from the merits of the appeal.
3. The appellant's claim is both procedural and substantive, the main points of which are as follows. The appellant asserts that the Council acted unreasonably in defending the appeal on grounds relating to reserved matters on an outline application, which could have been dealt with by conditions; that the Council unreasonably delayed in supplying its objections to the proposed development and the basis for its case at appeal, which only became clear when its committee report was made available during the case management conference; that the Council's evidence to the inquiry failed to substantiate its putative reasons for refusal and included vague and inaccurate assertions about the proposal's impact; that the Council refused to engage with evidence provided by the appellant on internal space standards and garden sizes which could have narrowed the matters in dispute at the inquiry; and that the Council delayed development which should clearly have been permitted having regard to the policies of the development plan, national policy and relevant material considerations, including that similar forms of development had been approved within Forge Wood.

4. The Council's claim is procedural. It contends that the appellant behaved unreasonably in submitting an appeal when the Council was actively considering amendments to the application; by seeking to introduce evidence late in the appeal process; and by failing to provide a justification for submitting late evidence until the inquiry opened.
5. Dealing firstly with the appellant's application, notwithstanding my decision on the appeal, I am not persuaded that the Council acted unreasonably in seeking to defend it. The Council's witness evidence to the inquiry adequately substantiated its concerns about the potential impact of the proposed scale of development on the character of Forge Wood and on the standard of environment and quality of quality of life of the future residents of the site. It also explained how in the Council's view the proposal differed from other phases of Forge Wood. Although I have reached the conclusion that the material submitted with the appeal was sufficient to demonstrate the proposed development could be accommodated on the appeal site in an acceptable form, subject to reserved matters conditions and planning obligations, it does not follow that the Council was unreasonable in taking the opposite view. The Council has detailed where it considered the illustrative material was inadequate and why it took the view that it did not stack up, with sufficient clarity and accuracy as to justify its stance.
6. With respect to the timing of the Council's comprehensive response to the revised scheme, it was not unreasonable for the Council to delay a response to consider its position once it had been notified of the intention to appeal and then to await the Statement of Case (SoC) stage once the appeal had been lodged. However, it was unreasonable for the Council to delay the submission of its full case against the appeal until the committee report was published on 13 November 2019. The submission of its SoC was the appropriate point in the appeal procedure to set out its case in full. The Council's SoC fell short of the level of evidence expected in Appendix J of the Planning Inspectorate's Procedural Guide, in not including all of the factual evidence and planning arguments on which the Council relied to justify its putative reasons for refusal, when compared to the level of detail in the committee report, which was published only two weeks later.
7. The fact that this detail was not provided until the officer report was made available, delayed the appellant's ability to prepare evidence to respond to the Council's case and inevitably led to the late updating of evidence by the appellant on internal space standards, garden sizes and floor layouts. However, procedurally, the delay was only a matter of a couple of weeks, given that the Council's SoC was submitted on 31 October 2019, as required within 5 weeks of the appeal start date of 26 September 2019. I have not seen evidence to show that this delay resulted in unnecessary or wasted expense on the part of the appellant.
8. With regard to the late evidence on internal space standards, floor plans and garden sizes, I also find it was unreasonable for the Council not to consider this evidence at an earlier stage in the appeal process. Notwithstanding the Planning Inspectorate's guidance on the submission of late material, it was incumbent on the Council to make a judgement on whether that evidence would assist in narrowing the matters in dispute. Had the Council considered the evidence during December when the Statement of Common Ground (SoCG) on Design was being prepared, it is possible these matters could have been

dealt with more fully in the SoCG. However, in the end a separate SoCG was agreed for internal space standards and floor layouts during the inquiry, and the discussion on garden sizes and separation distances would still have been necessary given the differences between the parties on those issues.

Therefore, I am not persuaded that the Council's unwillingness to deal with the late evidence at an earlier stage would have saved any time at the inquiry, nor that it resulted in unnecessary or wasted expense for the appellant.

9. Turning to the Council's claim, the appellant has explained that the timing of the notice of its intention to appeal and the submission of the appeal were prompted by the impending expiry of the 6 month time limit on appealing against a non-determination after the end of the statutory time period. Although the appellant knew the Council was preparing to send a comprehensive response to the revised scheme on the day it gave notice of its intention to appeal, it was not unreasonable for it to do so to safeguard its position. Had the Council provided its comprehensive response on the same day, as it had indicated, the appellant could have reviewed its intention to appeal, sought a formal extension of time and attempted to deal with the Council's concerns as part of the application. However, the Council decided not to provide its comprehensive response, an action which I have not found to be unreasonable. But in the absence of clarity over the Council's objections to the revised scheme and the length of time that had elapsed since the expiry of the statutory time period for determining the application, I do not find it was unreasonable for the appellant to appeal when it did.
10. The appellant's updated evidence on garden sizes, internal space standards and floor plans was submitted late in the appeal process at the beginning of December 2019. However, given that the Council had not provided the details of its case in defence of the appeal until the committee report published on 13 November, it was not unreasonable for the appellant to prepare evidence to respond to the Council's objections around 2 weeks later. The appellant explained by email, dated 11 December 2019, that the updated material did not alter the appeal proposal but was provided to help narrow down the issues that remained in contention and in turn save inquiry time. The appellant also indicated that if it could not be dealt with as part of the Design SoCG, it would be submitted to the inquiry in evidence. I am satisfied it would not have been possible for the appellant to have provided this evidence as part of its SoC given that this was an appeal against non-determination and the Council's objections to the revised scheme had not been provided at that stage. For these reasons, the appellant did not act unreasonably in submitting this evidence late in the appeal process. Its arrival at that time may have required additional work on the part of the Council, but this was neither an unnecessary or wasted expense given the issues to which it related were key matters of dispute between the parties.
11. I therefore find that, in respect of both applications for the award of costs, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

M Hayden

INSPECTOR