



Costs Decision

Inquiry Held on 21-30 January 2020

Site visit made on 31 January 2020

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

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

Decision date: 2nd March 2020

Costs application in relation to Appeal Ref: APP/W3520/W/18/3215534 Land adjoining Tuffs Road and Maple Way, Eye Suffolk

- 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 Mid-Suffolk District Council for a partial award of costs against Peter, Sylvia and Andrew West & Future Habitats Ltd.
 - 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 outline planning application for residential development of up to 126 dwellings and associated infrastructure including means of access (all other matters reserved for subsequent approval).
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Decision

1. The application for a partial award of costs is refused.

Procedural Matter

2. Two other applications for costs were also made by Peter, Sylvia and Andrew West & Future Habitats Ltd against the Council; firstly a partial award in respect of heritage evidence and an additional full application as they consider that the development should have been permitted by the Council. I have dealt with these applications together in a separate decision.

Reasons

3. Planning Practice Guidance (PPG) states that for planning appeals, all parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
4. PPG also advises that for inquiries, all costs applications must be formally made to the Inspector before the hearing or Inquiry is closed, but as a matter of good practice, and where circumstances allow, costs applications should be made in writing before the hearing or Inquiry. Any such application must be brought to the Inspector's attention at the hearing or Inquiry, and can be added to or amended as necessary in oral submissions. Anyone making a late application for an award of costs outside of these timings will need to show good reason for having made the application late, if it is to be accepted by the Secretary of State for consideration.

5. The Council submits that the appellants have behaved unreasonably in bringing a full application for costs at a very late stage and costs are sought in dealing with this post the closure of the event.
6. The appellant's costs application related to the Council's alleged unreasonable behaviour in the determination of the putative reasons for refusal which were established on 24 June 2019. It can be seen from my decision on that application that I found there was no unreasonable behaviour by the Council.
7. A separate application for a partial award of costs in respect of heritage matters was also submitted in writing by the appellant at the start of the Inquiry. In noting this application, I indicated that time would be made available at the end of the Inquiry to deal with this.
8. On Wednesday 29 January, I was also made aware of the appellant's intention to make a further application for full costs, with their advocate confirming that a written application could be produced by 6pm that evening, in order to allow the Council to consider it before the scheduled costs session. On that day, however, the Inquiry sat late due to the amount of evidence being heard and as such the appellant's advocate was unable to produce such a written copy.
9. Unusually, all of the costs applications followed a written procedure following the close of the Inquiry. In spite of best efforts, the Inquiry itself was busy in terms of the programming, and therefore I considered that it was most appropriate to deal with the various costs applications in writing, with a clearly defined and relatively swift timetable. At the event, dates were discussed and agreed by the parties in this regard, taking into account the availability of the advocates. The timetable was then verbally set by myself and subsequently confirmed in writing.
10. Based upon the details of the costs submissions raised, the appellants could have made an application earlier in the process. However, I am mindful that it was not a total surprise to the Council as the appellants had forewarned that such an application was likely to be forthcoming and it would have been necessary to hear the Council's evidence put forward within the Inquiry. It was not reasonable to ask the appellant's advocate to produce a written costs claim on the 29 January due to the late sitting that day. The intention to deal with this during the Inquiry was thus apparent, albeit overtaken by the proceedings running over time and indeed neither of the costs claims could be dealt with during the scheduled Inquiry time available.
11. Overall, while the appellants could have submitted their claim earlier, I do not consider that this amounts to unreasonable behaviour. In any case, I consider that any costs arising from the Council having to deal with the submissions following the close of the Inquiry would have had to be addressed in any case, given that there was no time at the event to hear any of the oral submissions.

Conclusion

12. I therefore conclude that unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. Therefore, the application should be refused and no award is made.

C Searson INSPECTOR