



Costs Decision

Inquiry Held on 1-4 October 2019 and 11-13 February 2020

Site visit made on 30 September 2019 and 3-4 October 2019

by Roger Catchpole BSc (hons) PhD MCIEEM

an Inspector appointed by the Secretary of State

Decision date: 6th April 2020

Costs application in relation to Appeal Ref: APP/P0240/W/18/3219213 Land north of Sunderland Road (Northing: 250966 Easting: 516649)

- 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 Central Bedfordshire Council for a partial award of costs against Pigeon Land Ltd.
 - The inquiry was in connection with an appeal against the refusal of outline planning permission for the erection of up to 228 homes, including 6 self-build plots and affordable housing, together with associated access and spine road, reserved site for medical surgery, care home site, family pub-restaurant site, amenity space, allotment site and associated infrastructure with all matters reserved except for access and spine road.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance 2014 (as amended) (PPG) advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour can either be procedural, relating to the process of an appeal or substantive, relating to the merits of any issues arising from an appeal.
3. The application for costs was made by the Council with reference to behaviour during an Inquiry into a refusal to grant outline permission for the erection of up to 228 homes, including 6 self-build plots and affordable housing, together with associated access and spine road, reserved site for medical surgery, care home site, family pub-restaurant site, amenity space, allotment site and associated infrastructure with all matters reserved except for access and spine road.
4. The Council believes that the appellant acted unreasonably because one of its witnesses, Mr Tiley, sought to introduce new evidence, both orally and in document form, whilst giving his evidence-in-chief on the last day of a 4-day Inquiry. The Council contends that the evidence that Mr Tiley sought to introduce had not been previously put to the Inquiry either in written submissions or during the cross examination of the relevant Council witness, Mr Lee. I ruled that this behaviour was Wednesbury unreasonable and

adjourned the Inquiry which was then resumed for a further 2.5 days, as set out in my appeal decision. Taken together these perceived failings risk an award of costs on procedural grounds.

5. The appellant believes that an award of costs is not justified because Mr Tiley was unaware of the full extent of the Council's case until receipt of Mr Lee's proof and the issues that came to light during his oral evidence on the first day of the Inquiry. This specifically relates to the factors that justified the downward adjustment of the Council's Strategic Housing Market Assessment (SHMA), as set out in paragraph 2.7 of Mr Lee's proof, and an assertion that Central Bedfordshire was exceptional on the basis of more than one housing need indicator, as highlighted in oral evidence.
6. However, in contrast to the extensive rebuttal proof of Mr Tiley that was submitted shortly before the opening of the Inquiry, Mr Lee's proof was submitted in good time which gave the appellant ample time to prepare its case. Given the late submission of Mr Tiley's rebuttal proof, I accept that the Council had no opportunity to respond other than through oral evidence which I find to be an entirely appropriate and reasonable response under the circumstances.
7. Furthermore, in stating that no other LPA ranked higher, Mr Lee was merely responding to a proposition put to him during cross examination. To behave otherwise would have allowed the rebuttal to go unchallenged which would have simply been non-sensical. Whilst the same argument was used to justify the behaviour of Mr Tiley during his evidence-in-chief, I do not find this proportionate bearing in mind the extent of evidence that he sought to introduce.
8. Given the above, I find that that the appellant acted unreasonably by seeking to introduce fresh and substantial evidence at a late stage thus necessitating an adjournment.
9. The PPG advises that an application for costs will need to clearly demonstrate how any unreasonable behaviour has resulted in unnecessary or wasted expense. In other words, the existence of unreasonable behaviour is not sufficient to justify an award of costs in and of itself. The behaviour must also directly cause another party to incur unnecessary or wasted expense in the appeal process. Where a partial award is sought then unnecessary expense needs to be clearly attributable to a specific aspect of the proceedings.
10. The appellant maintains that matters post-dating the adjournment in October 2019 had a bearing on the time that was required to complete the Inquiry as well as the fact that it resiled from evidence that I had not requested in Mr Tiley's supplementary proof of evidence. I accept that the Council submitted additional evidence that had not previously been encountered, such as the Z-scores, that necessitated a response. However, the unequivocal fact remains that the Inquiry would have been completed in the allotted time had it not been for the behaviour of Mr Tiley. As such, the additional time that was required in February and the supporting evidence the Council was obliged to produce would not have been necessary had his behaviour been otherwise.
11. Given the above, I conclude that unnecessary and wasted expense was incurred by the Council because of the need to prepare supplementary housing need evidence and attend the resumed inquiry in February 2020.

Costs Order

12. 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 Pigeon Land Ltd shall pay to Central Bedfordshire Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the preparation of supplementary housing need evidence and attendance at the Inquiry between 11-13 February 2020.
13. The applicant is now invited to submit to Pigeon Land 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. 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.

Roger Catchpole

INSPECTOR