The Planning Inspectorate

Costs Decision

Site visit made on 18 March 2020

by Mike Hayden BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 April 2020

Costs application in relation to Appeal Ref: APP/K2420/W/19/3229530
Land off Paddock Way, Hinckley LE10 3ED

- 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 Centre Estates Ltd for a full award of costs against Hinckley & Bosworth Borough Council.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for development comprising the erection of 63 no. one, two and three bedroom residential units (Class C3) over 5 no. detached buildings; provision of a new access; landscaping works and improvements; creation of 72 no. on-site parking spaces and associated works without complying with a condition attached to the planning permission granted by appeal decision APP/K2420/W/17/3189810, dated 13 September 2018.

Decision

1. The application for an award of costs is refused.

Reasons

2. 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. 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 substantive and procedural, comprising three main strands. Firstly, it asserts that the Council has delayed development which should have been permitted, made assertions about the proposals which are not supported by objective analysis and are inconsistent with the Council's previous position at appeal, persisted in objections which the previous Inspector indicated to be acceptable, and failed to grant permission for a scheme where there is an extant permission with no material change in circumstances. Secondly, that the Council did not enter into pre-application discussions, when a more helpful approach may have avoided the appeal. Thirdly, that the Council did not carry out consultation on the application, used that as a reason to dismiss the appeal and may have failed to adequately notify the public of the appeal.

4. With regard to the first strand, at the time of the Council's decision not to validate the application, case law did not preclude the use of a section 73 application to vary the terms of a planning permission. However, the judgement to be applied on whether sections 73 or 70 should be used was

whether the modification sought to the approved scheme was or was not fundamental. The courts had ruled that this was a question of fact and degree, involving a planning judgement, which was for the decision-maker to make, provided it was not irrational or unreasonable.

5. The Council justified its decision in a non-validation notice, explaining its view that the changes would significantly increase the number of units by 15% and fundamentally alter the housing mix, density and design of the development, with potential detrimental impacts on a range of factors. In doing so, the Council was not expressing a view on whether the proposed amendments would be acceptable or not, but whether they could be dealt with validly under a section 73 application. As such, I do not interpret the Council's reference to potential impacts as objections to the proposal, but a range of possible effects arising from the alterations to the scheme, which would need to be assessed in the light of the updated technical evidence. Although the Inspector judged the approved development to be acceptable in terms of housing mix, density, design, living conditions and highway safety, the proposed amendments amount to a material change in circumstances from the approved scheme. For example, the revised housing mix varies considerably from that considered by the previous Inspector and would need to be re-assessed against the evidence of housing need.

6. Turning to the second strand of the claim, it is evident from the appellant's covering letter with the application, dated 8 February 2019, that the Council did offer pre-application advice. Under a heading of 'Pre-Application Engagement', the letter records that the Council advised that an application which resulted in an increase in the number of units would require a new application, rather than one under section 73; a position which is supported by the PPG.

7. With regard to the third ground, procedural claims should relate to the behaviour of parties in relation to procedural matters at the appeal rather than the application. Reliance on the absence of consultation on the application as a defence at appeal may have shown a misunderstanding of the appeal process, but does not amount to unreasonable behaviour. Whilst the Council did not initially notify interested parties of the appeal, it did so on seeking clarification from The Planning Inspectorate on the correct notification procedure to apply in this case. No interested parties were prejudiced as a result.

8. Therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

M Hayden

INSPECTOR