
Costs Decision

Hearing Held on 11 February 2020

Site visit made on 10 February 2020

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2020

Costs application in relation to Appeal Ref: APP/R2520/W/19/3236497 Land to the West of Haddington Lane, Thurlby, Lincoln, Lincolnshire

- 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 North Kesteven District Council for a full award of costs against South Lincolnshire Estates Limited.
 - The hearing was in connection with an appeal against the refusal of planning permission for a crematorium (Use Class Sui Generis) with associated car parking, access, landscaping and boundary treatments.
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Decision

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

Procedural Matters

2. The Council submitted an application for costs in writing the day before the opening of the Hearing and added briefly to the application in oral submissions at the Hearing. In recognition of the timing of the Council's costs application, I allowed South Lincolnshire Estates Limited (SLEL), as the respondent, to provide a written response to the costs claim following the close of the Hearing, and an opportunity for final comments was afforded the Council.
3. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The PPG states that the circumstances when the behaviour of a local planning authority might lead to an award of costs can either be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.

The submissions for North Kesteven District Council

5. The Council's case refers both to procedural and substantive matters. In respect of the former, the Council argues that SLEL submitted late evidence in the form of a rebuttal statement, beyond the deadline for submission of written statements. This rebuttal statement introduced further argument in response to the Council's statement of case under the guise of updating the evidence to reflect the latest ONS statistics, but went beyond this to further argue the case with respect to need, including the appropriateness of a second chapel at

Lincoln. It is the Council's case that updated figures could have readily been submitted as part of the Statement of Common Ground (SOCG). Moreover, the rebuttal made comment on other matters including revised plans, the planning balance and overall conclusions.

6. The Council contends that this submission was unreasonable as it did not meet the criteria set out at Paragraph E.9.4 of the Procedural Guide Planning Appeals – England (now February 2020) for acceptance of late evidence. Moreover, it required the Council to reappoint its consultants to consider and respond to the additional evidence, adding to its costs. The Council added to this claim at the Hearing in response to the submission by SLEL on the day of a copy of the committee report for the planning application for the crematorium at Lea.
7. On the substantive grounds, the Council argues that SLEL, through submission of its Updated Needs Assessment (UNA) at the appeal stage, substantively recast its case through submission of significant new evidence addressing several areas of dispute. Whilst the Council accepts that additional evidence was warranted to respond to the planning permissions granted at Lincoln, it argues that SLEL should have addressed this via a significantly reduced brief rather than recasting the overall needs assessment. The Council argues that this was unreasonable behaviour which required it to test the evidence again by reappointing its consultant at additional cost.

The response by South Lincolnshire Estates Limited

8. SLEL submits that the rebuttal statement was submitted to provide clarification on the differences between the main parties' assumptions in respect of need. This updated evidence allowed for an enhanced SOCG and a more focused discussion at the Hearing.
9. Moreover, SLEL argues that the Council's case changed from its refusal of the planning application to its Statement of Case, principally by accepting evidence of a quantitative need at Lincoln and by placing weight on the planning permissions granted at Lincoln as an alternative reason for concluding that need had not been proven. SLEL contends it would have been deeply disadvantageous to the Appellant and prejudicial to a fair Hearing if they had not been given an opportunity to respond to this new position.
10. With respect to the rebuttal document, SLEL points to an accompanying email dated 13 November 2019 which addressed the criteria of paragraph E.9.4 of the Procedural Guidance. SLEL argues that the evidence was submitted promptly, did not lead to an adjournment, led to better use of Hearing time and that the Council only responded to the technical nature of the issues raised.
11. On the substantive claim, SLEL responds that Paragraph E.3.4 of the Procedural Guide permits the appellant to add to their case from that submitted at the original application. The claim that SLEL 'recast' its case is misrepresentative. SLEL argues the issue of need has always been central to its case from the outset, and those matters highlighted by the Council as being subject to significant new evidence are explicitly or implicitly referenced in the reason for refusal. The UNA, and SLEL's case generally, sought simply to address the reason for refusal. SLEL argues that, if anything, it was the Council who recast their case by shifting the emphasis from a lack of need to the effects of a second chapel at Lincoln in meeting that need.

12. SLEL further refers to unsuccessful efforts it made prior to the determination of the application to discuss the issue of need with the Council. It adds that none of the examples of behaviour set out in the PPG which may justify a substantive award of costs apply. The Council's claim is therefore unjustified.
13. SLEL accepts that the Lea committee report should have been submitted earlier, but was not a deliberate omission and its purpose was solely to aid discussion at the Hearing. The submission did not warrant an adjournment of the Hearing and was dealt with promptly with no cost to any party.

Reasons

14. Taking the substantive claim first, it is apparent from the chronology of need evidence from SLEL and responses by Impact Planning Services (IPS) acting for the Council that the parties were some distance apart on several issues and both sought to add to their positions or correct the other party's evidence over the course of the appeal, with the disparity in position still evident in the areas 'not agreed' in the SOCG, and in the discussions at the Hearing.
15. However, the Procedural Guide makes it clear that the appellant may add to their case from that submitted at the original application. Given the Council's reason for refusal specifically referred to perceived failures by SLEL to take relevant matters into account, such as the effect of Lea Crematorium opening, and in view of the technical nature of the matters at issue, it is entirely reasonable that SLEL would seek to augment its case to respond to the reason for refusal. Indeed, the Council accepts that the issue of a second chapel at Lincoln was a new material consideration which SLEL could not reasonably have addressed earlier.
16. I am satisfied that SLEL sought to respond directly to the Council's reason for refusal through its UNA and I do not agree that the appellant 'recast' its case substantially, but sought to present its updated case comprehensively. Whilst the reproduction of a fully updated document and multiple appendices made for a voluminous body of evidence overall, and required time and care to digest its content, an appellant is entitled to submit the evidence it considers necessary to make its case in full, and there was nothing unreasonable in this approach. Moreover, given the nature of the reason for refusal, it should not have come as a surprise to the Council that SLEL would seek to address these matters, or that IPS may need to be re-engaged to update the Council's position on need as part of its overall case. On this ground, therefore, I find that unreasonable behaviour has not been demonstrated.
17. Turning to the procedural claim, it is not in dispute that SLEL's rebuttal was submitted outside of the relevant timescales. Both SLEL and the Council put their views to me as to whether to accept it, having regard to the Procedural Guide. The evidence was submitted in good time ahead of the original Hearing date. Having regard to the evolution of the Council's position in its statement of case, I can understand SLEL wishing to address this prior to the Hearing, and it was duly indicated to me that this evidence would otherwise have been introduced at the event. Given its technical nature, its submission then would have raised a strong likelihood of a significant adjournment of the event. I also noted the intention that the additional evidence would assist towards further agreement within the SOCG. Whilst the Council had to re-engage IPS, it was given sufficient time to respond with evidence which allowed me to consider the most up-to-date position of both parties and did not result in a delay to the

appeal overall. Ultimately, I considered that acceptance of the evidence at that time would not result in procedural unfairness and my view has not changed.

18. In respect of SLEL including comments on matters other than need in its rebuttal, these were brief in nature and did not raise substantive new evidence, such that the Council was satisfied that it did not need to devote additional time to respond to these matters. Similarly, the Lea Crematorium committee report submitted on the day of the Hearing did not lead to a significant adjournment, nor did it unreasonably prolong matters, given its purpose was to illuminate a specific policy point. Therefore, I do not find unreasonable behaviour in these respects.

Conclusion

19. I find that in respect of both the procedural and substantive claims made by the Council, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is not therefore made.

K Savage

INSPECTOR