



Costs Decision

Site visit made on 2 June 2020

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th June 2020

Costs application in relation to Appeal Ref: APP/J0405/W/20/3245860 Land to the South East of 40-52 Horton Road, Slapton LU7 9DB

- 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 Interguide Group Limited for a full award of costs against Buckinghamshire Council – Aylesbury Area.
 - 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 for development described as 'outline planning application for a residential development of up to 9 dwellings with all matters reserved other than access'.
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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 where the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process.
3. It goes on to explain that local planning authorities are at risk of an award of costs if they behave unreasonably with regard to procedural matters or to the substance of the matter under appeal. Examples given of unreasonable behaviour include references to failing to produce evidence to substantiate reasons for refusal; making vague, generalised or inaccurate assertions about a proposal's impact; and refusing to provide requested information when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or narrowing of the issues to be considered.
4. It is clear from the evidence before me that there is a protracted planning history to the site and that the applicant is aggrieved by the Council's handling of the current and previous applications. However, each cost application must be considered on its own merits and must be specific to the costs incurred in connection to the related appeal. The circumstances of previous decisions are therefore of little relevance here. Similarly, while I note details provided of the number of complaints made to the Local Government Ombudsman, this is not a factor which affects my consideration of the merits of the current application.
5. With regard to the appeal before me, the Council disputes the suggestion that no case officer was assigned to the application for part of the determination period. Be that as it may, it is apparent that the Council did not respond to the applicant's efforts to discuss the application or otherwise provide an update on

- progress, even after the prescribed date for the application had been exceeded by some time.
6. The Council acknowledge that this is regrettable, and I can quite understand the applicant's frustration. Nevertheless, the PPG notes that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage and that costs unrelated to the appeal are ineligible.
 7. The appeal follows a previous application on the site¹ which was refused for 4 reasons. The Council's appeal evidence confirms that those reasons relating to the provision of sustainable drainage and the effects of the development on trees and biodiversity had been overcome. Earlier communication by the Council of this position could have avoided the need for the applicant to address these considerations as part of the appeal. Nevertheless, the applicant's case on these matters was straightforward, involving brief references to submitted application documents. In effect the applicant has quickly and easily addressed these considerations without wasting additional expenditure.
 8. The applicant raises concerns that despite the decision on an earlier appeal at the site² which found that the location of the development and its proximity to services would represent a suitable site for housing, the Council refer to the proposal as 'unsustainable'. The Council's report on the proposal does refer to concerns over the location of the site in relation to local services and transport links, but it goes on to acknowledge the earlier appeal decision and confirms that there is no objection on these grounds. On a reading of the report as a whole, the reference to the proposal as unsustainable strikes me as an overarching assessment that it does not accord with the definition of sustainable development outlined by the National Planning Policy Framework, rather than in terms of its locational accessibility. Accordingly, I do not find that the Council has persisted in objections to elements of the scheme which have previously been found to be acceptable.
 9. The Council did not take up the opportunity to respond to the applicant's rebuttal of its appeal evidence. A response may have been helpful, but the fact that none was offered is not unreasonable behaviour. Similarly, although errors within the information recorded on the Council's Appeal Questionnaire highlighted by the applicant may be unfortunate, this does not amount to unreasonable behaviour. However, when the Appeal Questionnaire was submitted on 9 March 2020, the Council also failed to include comments submitted by the landscape officer on the application which are dated 20 December 2019. The applicant identifies that these were not published on the Council's website until 2 April 2020.
 10. I am not persuaded from the evidence before me that the failure to make the landscape officer's comments available earlier in the process demonstrates a deliberate attempt by the Council to hamper the applicant's ability to appeal. Nevertheless, I note that only supplying relevant information at appeal stage when it was previously requested, but not provided, at application stage is one of the examples of unreasonable behaviour given within the PPG. The delay in making the landscape officer's comments available clearly meant that the

¹ Application reference 18/00305/AOP

² Appeal reference APP/J0405/W/16/3147780

applicant was unable to address them when the appeal was submitted, and amounts to unreasonable behaviour on the Council's part.

11. However, for an award of costs to succeed, such behaviour must also have resulted in unnecessary or wasted expense. The applicant was afforded an opportunity to address the comments of the landscape officer, together with the rest of the Council's evidence, during the appeal process, and indeed have done so.
12. I note the applicant's concerns that the Council's report is similar to the report for an earlier application³, and that the assessment of landscape and visual effects reads as the planning officer's observations rather than the judgement of the landscape officer. The applicant is also concerned that both the report and the comments of the landscape officer refer to details which would relate to the reserved matters of the development.
13. I note changes were made from the earlier application including to the position of the access and illustrative layout shown. However, the Council's report reflects these changes. I recognise that discussion of the landscape and visual effects of the proposal reflect some of the earlier report, but I do not find this to be unreasonable in light of the clear similarities which remain between the proposals. The report further includes an additional section on 'landscape visual impacts', which refers to comments made by the landscape officer. Although proposals should be assessed with regard to relevant material considerations which may include comments by consultees or other interested parties, there is no requirement to agree with submitted comments, much less to recite or present them as the planning officer's assessment of the proposal.
14. Consideration of the landscape and visual effects of development are matters of planning judgement, and I find that the Council's concerns in this regard are clearly explained within their statement with reference to relevant policies of the development plan. There are references within the Council's report and the comments of the landscape officer to details relating to the reserved matters of appearance, layout and scale. However, the brevity and loose nature of these does not suggest to me that these were decisive factors, or that they unduly influenced the Council's assessment which in large part relates to concern over the position of the development and its failure to integrate with Slapton, as well as the addition of built form to the currently undeveloped site.
15. Given the nature of these concerns, it is unlikely that they could have been wholly addressed through discussion or amendments, or that the appeal could have been avoided. I am satisfied that the Council have substantiated the putative reasons given for refusal, and I am not persuaded that there was a failure to properly consider the proposal on its own merits. Moreover, while the delay to the applicant's ability to respond to the landscape officer comments was unfortunate, it has not been demonstrated that this delay has resulted in additional or wasted expenditure in the appeal process that would not have been necessary had the Council made the comments available promptly.

Conclusion

16. I have found that the delay in making the comments submitted by the landscape officer available amounts to unreasonable behaviour by the Council.

³ Application reference 18/00305/AOP

The failure to adopt a positive and proactive approach to decision making was further unfortunate. Nevertheless, I find that the unreasonable behaviour has not caused the applicant unnecessary or wasted expense, as described in the PPG. Consequently, for the reasons given above, the application for a full award of costs is refused.

J Bowyer

INSPECTOR