



Costs Decision

Site visit made on 14 May 2020

by S Hunt BA (Hons) MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 17th June 2020

Costs application in relation to Appeal Ref: APP/R4408/3242646 Land to the South of Lee Lane, Royston, Barnsley

- 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 Bellway Homes Ltd (Yorkshire Division) for a full award of costs against Barnsley Metropolitan 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 for residential development of 250 dwellings with associated access, parking, engineering, landscaping and ancillary works.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, 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. The Council have put forward a number of examples of both procedural and substantive unreasonable behaviour on the part of the applicant.
3. In terms of substantive unreasonable behaviour, the PPG sets out that this may relate to a ground of appeal which had no reasonable prospect of succeeding. This may occur when the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise. I have found that the development conflicts with the Barnsley Local Plan (BLP). Policy MU5 clearly states the necessity for a Masterplan Framework (MPF) in order to ensure that development is brought forward in a comprehensive manner, and this is supported by BLP Policy GD1.
4. I disagreed with the applicant that identified benefits were sufficient to indicate that a decision should be made otherwise in accordance with the BLP, nonetheless they were entitled to advance this argument. They put forward a comprehensive case as to why they consider a breach of Policy MU5 in respect of the lack of a MPF would not result in significant harm. This is not a case which had no reasonable prospect of succeeding therefore it does not constitute substantive unreasonable behaviour.
5. Examples of procedural unreasonable behaviour set out by the Council date from September 2019, around seven months from submission of the

- application. At that time there were clearly a range of matters primarily related to off-site junctions that required further consideration by the respective highway consultants. The fact that the applicant had asked for the application to be kept in abeyance at that time is not unreasonable behaviour in the circumstances.
6. Amended layouts were submitted by the applicant in response to various points raised by officers during the application which is reasonable behaviour. A second set of amended plans submitted in November addressed an inconsistency in house types and layout, which is not unreasonable.
 7. The amendments to the layout plan resulted in alteration to house types. This had implications for the input figures for the viability appraisal. Additionally, the adoption of a new SPD in December 2019 resulted in the requirement for an additional S106 contribution towards sustainable transport. It is reasonable that the applicant would submit updates to the appraisal to reflect such alterations. The appointment of a viability consultant by the Council is likely to have been necessary regardless of an appeal being submitted as part of negotiations for S106 contributions, if the Council does not have in-house expertise to carry out an appraisal of viability.
 8. I concur with the applicant that they were reasonably attempting to reduce the range of issues in dispute by submission of amended layout plans, ecology and highways information. They would have been aware of the Council's resistance to the application in respect of the lack of a MPF from an early stage. They did not seek to address this fundamental policy conflict through the application process as this would be the focus of a future appeal.
 9. Submission of amended plans and additional information continued after the appeal had been lodged. Just prior to the case management conference the applicant provided the final amended layout plan and this necessitated additional public consultation. Once again this was an attempt to narrow down the issues in dispute and I accepted the amended plan for this reason. Indeed the submitted information resulted in the Council withdrawing their objections on some issues. The submission of fresh evidence at this stage does not represent procedural unreasonable behaviour.
 10. On 20-21 February the applicant provided a new and substantial range of new highways information including data surveyed in October 2019. The Council were unable to properly assess this before the deadline for proofs of evidence and the highways statement of common ground (SoCG). The introduction of this evidence was intended to save time and narrow areas of dispute, nonetheless it is unfortunate that important data taken some 4 months previously was not shared earlier. The evidence of the Council's highway officer was incomplete¹ as a result of this. The delay amounts to procedural unreasonableness.
 11. Ultimately, the cancellation of the inquiry resulted in more time for the main parties to come to further agreement on some of these matters. The supplementary highways SoCG (April 2020) clarified inconsistencies in the October 2019 data that were not previously raised in the original highways SoCG. Notwithstanding this, the additional information had still not been fully assessed by the Council at the time of exchange of final submissions. The

¹ Wayne Lake Proof of Evidence - paragraphs 1.4, 1.5, 5.13

technical note² from the Council's consultant does not refer to the October 2019 data. Consequently it has not been demonstrated whether there was unnecessary or wasted expense resulting from the unreasonable behaviour.

12. The point at which each party indicate that it would be applying for costs is irrelevant. It is reasonable for the applicant to signal a costs application after sight of all the evidence.

Conclusion

13. In conclusion, whilst I find that the applicant has acted unreasonably in respect of the late submission of highways information, it has not been demonstrated that this has resulted in unnecessary or wasted expense. Unreasonable behaviour has not been demonstrated in respect of any other matter whether substantive or procedural. Therefore no award of costs is made.

² Highways and Transportation Issues Technical Note (Aecom, 17 March 2020)