The Planning Inspectorate

Costs Decision

Hearing Held on 22 April 2021

Site visit made on 23 April 2021

by Matthew Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th July 2021

Costs application in relation to Appeal Ref: APP/F2415/W/20/3262726 Bowden Fencing, Leicester Lane, Great Bowden LE16 7HA

- 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 Barwood Homes for a full and partial award of costs against Harborough District Council.
- The hearing was in connection with an appeal against the refusal of planning permission for the erection of 33 dwellings with associated landscaping, highways and drainage infrastructure.

Decision

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

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.

3. In summary, the applicant's first claim is on substantive grounds. The Council initially considered the application at a planning committee where Members of the committee voted to approve the application. However, due to technical reasons the committee meeting was not broadcast properly. Subsequently, a second committee was held, but the application was refused by the committee despite, it is alleged, there being no material change in circumstances.

4. The applicant's second claim relates to procedural unreasonableness, as they state that the Council did not clearly and precisely specify the full reasons for refusal on their decision notice, and then went on to include substantial evidence in their appeal not specified on the decision notice. This, it is alleged, incurred additional expense due to the applicant fielding professional witnesses at the hearing. Not only that, but the arguments made by the Council in defending the additional evidence were without merit.

5. In relation to the first claim, the very essence of a planning committee is so that Members can discuss the merits of, and make a decision on, a planning application in an open and transparent manner. I see no reason why Members should be bound by the vote they made at the first planning committee meeting when the validity of that meeting was undermined by procedural and

democratic unfairness. Therefore, I am not satisfied that determining the application as they did, based on the outcomes of the latter committee meeting discussion and contrary to the conclusions they made in the previous meeting, amounts to unreasonable behaviour.

6. In relation to the second claim, it is a matter of fact that the decision notice contains reference to Policy EMP1(a) only, and excludes any reference to EMP1(b), which formed the main plank of the Council's submission in this appeal. Notwithstanding this, the Council did not substantiate their concerns about the alleged conflict with Policy EMP1(b). This was despite the Council's officer report suggesting that the Council had no concerns with the scheme in relation to Policy EMP1(b). Therefore, the imperative was on the Council to justify their case as part of the appeal in the face of opposing evidence. Given the nature of the subject matter, I would have expected a robust and well evidenced submission by the Council, with input from a suitably qualified professional in the appropriate field of expertise if necessary.

7. The scope of debate during the hearing in relation to Policy EMP1(a) was narrow. Conversely, I heard from several of the applicant's professional witnesses concerning the Council's objection to Policy EMP1(b). It follows therefore, that the applicant expended time in preparing a significant part of their case in order to defend a part of the Council's unsubstantiated objection which was only introduced at the appeal stage. This resulted in unnecessary and wasted expense for the applicant in employing suitably qualified professionals to defend the Council's concerns. I therefore conclude that a partial award of costs is appropriate.

Conclusion

8. A full award of costs is not justified. However, for the reasons given above, it is concluded that a partial award of costs against the applicant, on grounds of unreasonable behaviour resulting in wasted expense, is justified in the particular circumstances.

Costs Order

9. 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 Harborough District Council shall pay to Barwood Homes the partial costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in the time spent on defending part of the Council's reason for refusal in respect of Harborough District Council planning application Ref 19/01902/FUL, dated 4 November 2019, which was refused by notice dated 19 June 2020.

10. The applicant is now invited to submit to Harborough District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount, such costs to be assessed in the Senior Courts Costs Office if not agreed.

Matthew Woodward

INSPECTOR