



Costs Decision

Hearing Held on 8 July 2021

Site visit made on 15 July 2021

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th October 2021

Costs application in relation to Appeal A Ref: APP/R3650/W/20/3252976 Wildwood Livery, Hook Street, Rudgwick, Horsham RH12 3 GG

- 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 Waverley Borough Council for a partial award of costs against Mr J Pearson.
 - The hearing was in connection with an appeal against the refusal of planning permission for a hybrid application: change of use to single dwelling: outline application for the erection of 6 dwellings with all matters reserved except vehicular access following the demolition of existing buildings and structures.
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Decision

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

The submissions for Waverley Borough Council

2. The Council has been forced to make an application for a partial award of costs against the applicant in respect of the 5YHLS evidence. Specifically, the applicant and Council agreed to and signed a Statement of Common Ground (SOCG) on 06/07, wherein specifically paragraph 9.4 read 'For the purposes of the appeal for Wildwood Livery it is agreed the Council has 4.26 years' worth of housing land supply'.
3. This sentence infers that both parties were in agreement regarding the figure for 5YHLS and that this was not disputed by the applicant. Within the SOCG, the Council agreed to include reference to both the Council's 5YHLS evidence and the applicant's report by Icen in section 9 as this was felt to be a factual representation of information submitted by both parties.
4. However, at no point did the applicant specifically state that the figure for 5YHLS was in dispute, neither in section 9 (5YHLS) nor in sections 11 (matters not in dispute) or 12 (matters in dispute). On that basis, the Council did not submit to the Inspector its 5YHLS Rebuttal Statement, as it was of the opinion that the 5YHLS matter was not in dispute.
5. However, following on from this the applicant's agent asked the Council to withhold sending the SOCG, as he wanted to make final changes to the document, which it was confirmed changes were being made to the suggested final conditions and an update following the granting of permission for the barn conversion at Section 12. There is an email trail between the agent and the Council's case officer to support this.

6. Within this email trail there is no reference to the other change made to the wording at paragraph 9.4 regarding the 5YHLS position. At this point, the applicant had seen the Council's addendum statement which confirmed the Council's concession to the 5YHLS argument based on a recent appeal decision.
7. This small but subtle change indicates the change in position of the applicant with regard to the agreed position on 5YHLS. By purposefully omitting to reference this change in the email correspondence with the Council, at such a late stage, the applicant has misled the Council in terms of its position and compromised the Council's ability to present considered and written evidence in support of its case. This late and underhand behaviour is unreasonable on behalf of the applicant, especially given the lengths the Council has gone to in order to resolve as many other outstanding matters with the applicant prior to the hearing.
8. As a result, the Council has been put to wasted expense both in terms of providing last minute evidence on its 5YHLS position and additional officer time at the hearing. Work had ceased on the Council's 5YHLS rebuttal statement as the applicant had previously agreed the position. This amounts to unreasonable behaviour on the part of the applicant.

The response by Mr J Pearson

9. A genuine misunderstanding has occurred in completing the SOCG. The applicant was seeking to address grammatical drafting of the paragraph in question at a time when seeking to urgently submit in accordance with appeal deadlines. Nevertheless, it should have clear that the 5YHLS was never agreed between main parties. Within the SOCG, the remaining parts make it clear that the applicant was indicating a lower 5YHLS than that indicated in the disputed part.
10. The Council has had time to work through the 5YHLS provided by the applicant at the hearing. It had ample time to prepare a rebuttal statement given the applicant's update report in June 2021. Bearing in mind the time spent to come to this stage, the applicant's actions are not unreasonable. It is somewhat surprising that the Council indicates that the work undertaken at the appeal was wasted because of the case put forward by the applicant.

Reasons

11. The Planning Practice Guidance 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. Under the guidance, introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen, can be a ground for an award of costs.
12. However, the SOCG read as a whole should have alerted the Council to the fact that there was an issue still on 5YHLS. With the SOCG written as suggested by the Council, there would have been an inconsistency with the remaining section of paragraph 9 of the document. In this regard, it would have indicated agreement of parties on a supply of 4.26 and yet further on in the paragraph, indicated the applicant maintains 3.9 years supply. Furthermore, there is an obligation for parties to check documents thoroughly that they agree to, irrespective of whether they feel misled. At the hearing,

opportunity was given to the Council to consider the applicant's evidence on housing land supply. Sufficient time was given to the Council to consider this issue. At the hearing, the issue of housing supply was discussed later in the day to enable a Council officer to assess the applicant's evidence whilst other issues were discussed first.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Jonathon Parsons

INSPECTOR