



Costs Decision

Hearing Held on 16 and 17 December 2020

Site visit made on 24 February 2021

by J Ayres BA Hons, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 02 NOVEMBER 2021

Costs application in relation to Appeal Ref: APP/Z5060/W/19/3239837 649 Dagenham Road, Romford RM7 0QX

- 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 Mr G Chowdhury for a full award of costs against the Council of the London Borough of Barking & Dagenham.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of temporary marquee in the grounds (on seasonal basis for up to 16 weeks per year) for use as function venue for up to 400 guests and provision of additional car parking spaces on land between the existing farmhouse venue and the millennium centre car park.
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Decision

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

Submissions

2. The hearing was initially set for 4 February 2020. However, the Inspector notified the Council that the requisite period for notifying parties had not been complied with. Accordingly, the hearing was adjourned and set to take place in person commencing 31 March 2020. Due to the coronavirus pandemic the hearing did not take place on the 31 March 2020.
3. On 28 March the appellant provided notification of intent to submit a costs application. At that time the Council responded to the notification in writing. A further application for costs was made in writing prior to the hearing, with the parties given the opportunity to make further oral submissions.
4. The costs application was made on three grounds. Firstly, that the Appellant incurred unnecessary costs relating to the adjournment of the hearing scheduled for 4 February 2020 due to the Council's failure to provide the requisite notice. Secondly, that the Appellant incurred unnecessary costs in respect of issues relating to transport on the basis that the Local Planning Authority would not engage with the Appellant on this matter during the application process and subsequently failed to substantiate the reason for refusal. Thirdly, that the Local Planning Authority failed to provide any substantive evidence regarding noise to support the reason for refusal relating to the tranquillity of the Eastbrookend Country Park.

Reasons

5. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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. Unreasonable behaviour may be procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal. The PPG also advises that costs applications may relate to events that occurred before the appeal. Behaviour and actions by the parties at the time of the planning application can therefore be taken into account when considering whether or not costs should be awarded.

Adjournment

6. The PPG advises that Local planning authorities are required to behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the process. The Appellant asserts that due to the short notice of the adjournment of the hearing significant costs were incurred. They request a procedural award of costs against a Local Planning Authority on the basis that the Council failed to notify the public in accordance with the PPG (PPG Reference ID: 16-047-20140306).
7. The Council asserts that the reason for the error in issuing the requisite notices was due to an IT error. The second adjournment was necessary due to the restrictions put in place as a result of the coronavirus pandemic, and therefore beyond the control of the Council. The Council asserts that it did not behave unreasonably, and that the associated costs would have been incurred in any event. It is put to me that the issue of costs was not raised in relation to the first adjournment, and that notification of the intent to apply for costs was only carried out following the second adjournment. Thereby implying that wasted costs were not incurred for the first adjournment, and any wasted costs associated with the second adjournment were beyond the control of the Council.
8. The hearing set for Tuesday 4th February was adjourned due to the failure of the Council to comply with the notice period associated with the hearing. Letters were sent out notifying the public of the hearing arrangements, however these were not done in accordance with the set timescales. The reason put forward by the Council relates to a problem with the IT system and standard template letters. Such IT issues are beyond the control of the Council and I have some sympathy in this regard. Had the delay been brought to the attention of the Inspector when it happened, it may have been possible to provide advance warning of the need to adjourn. However, in this case the Inspector identified the problem shortly before the hearing was due to commence and as a result the decision was taken to adjourn the hearing on Friday 31 January. I find that the Council did behave unreasonably in relation to the procedural requirement to provide the requisite notice of the hearing.
9. Turning then to whether the appellant incurred costs as a result of that unreasonable behaviour. The costs necessary for preparing for the hearing would have been incurred in any event, regardless of the adjournment, and no additional evidence was required during the period of adjournment. However, due to the late acknowledgement that the process had not been correctly followed, the Appellant incurred fees in relation to the event itself. Therefore, I

find that the Appellant incurred unnecessary costs in the appeal process on a procedural basis due to the failure of the Council to notify the public within the requisite period. Accordingly, a partial award of costs relating to unnecessary fees for attendance at the adjourned hearing on 4th February by the Appellant's Agent, Barrister and Transport Agent should be awarded.

Transport

10. The Appellant's application is that costs were unnecessarily incurred in producing transport evidence for the hearing, in circumstances where there was no reasonable basis for the Council's transport objections. The Appellant asserts that the Council's transport officer refused to meet with the Appellant's agent or his transport engineer to try and resolve or even explain in detail, the issues arising during the process of the application or appeal. This is despite numerous requests for such a meeting. The Appellant seeks a procedural award of costs on the basis of the failure to co-operate (PPG Reference ID: 16-047-20140306).
11. The Council gave oral submissions at the hearing that the Transport Officer made a judgement on the scheme based on local knowledge and was therefore not unreasonable to reach his conclusion. With regards to the failure to engage with the Appellant, the Council asserts that, as these actions preceded the decision on the planning application, they should not be taken into account regarding whether or not the Council behaved unreasonably.
12. There is a clear paper trail that during the months of February and March, when the application was being considered by the Council, the Appellant made several attempts to meet with the transport officer. When informed that the transport officer did not consider a meeting necessary, the Appellant's transport agent contacted them in writing seek to clarify and resolve transport matters.
13. The Council's transport officer did attend the hearing and spoke to the transport section contained within the Council's Statement of Case. However, the Council provided very limited evidence such to demonstrate that the proposal would result in additional pressure such to have an unacceptable impact on highway safety. The Appellant provided significant evidence identifying traffic and collision data, surveys taken during events, and assessments of the road network. These were used to have a discussion regarding the existing safety of the junction, and the effect of the proposal on the safe use of the junction and the general highway.
14. The Council's transport officer maintained their position that they had concerns regarding the junction, but did not provide any specific evidence to substantiate the reason for refusal. When questioned at the hearing regarding highways works that were to be implemented in accordance with a previous S106 planning obligation, the Council were unable to clarify whether those works would address their concerns. Nor were they able to provide evidence relating to the implementation of those works.
15. Whilst it is disappointing that the Council did not engage during the application process, I consider that the transport officer was entitled to form an opinion based on local knowledge and object to the proposal on that basis. However, following the inclusion of a reason for refusal on those transport objections, it would be expected that the Council would provide clear evidence to

substantiate the reason for refusal. In the absence of providing this I find that the Council has behaved unreasonably in regard to the substance of the matter under appeal.

16. Turning then to whether this has resulted in unnecessary cost to the appellant in respect of the appeal. The appellant attempted to resolve the matter through the application stage, however engagement was not forthcoming. Therefore, following the inclusion of highways concerns as a reason for refusal, the appellant had no choice but to address the matter as part of their appeal. In doing so they submitted a substantial amount of evidence to address every eventuality. I have found that, subject to appropriate conditions and a s278 Agreement, the proposal would be suitably mitigated and that there would not be an unacceptable impact on highway safety.
17. I find that the Appellant has incurred unnecessary costs in the appeal process due to the need to address transport issues. Such costs relate specifically to the time associated with the preparation of evidence by the Appellant's transport agent for the appeal, and his attendance at the hearing.

Noise

18. The Appellant asserts that the Council failed to acknowledge the advice of its own expertise with regards to noise pollution as no objection was raised subject to potential conditions allowing mitigation, however the Council included the effect of the proposal on the 'tranquillity' of the park in its reasons for refusal. The Appellant suggests that the Council was unreasonable to maintain that the tranquillity of the country park would be disturbed as reasoned in the 2012 appeal decision, whilst it promotes very large public events in the same park.
19. The Council's response relates to the consideration of the tranquillity of the park as part of its character, and the effect of the intensification of the use of the site on that character, which in their view would be related to an increase in noise affecting the character of the park. The Council confirmed that noise from the site was put forwarded as a matter that could be addressed by way of condition.
20. The effect of the proposal on the character of the area included a discussion regarding the atmosphere of the park, the tranquil areas and those that are more active. The Council's Principal Development Management Officer and Ranger Service Team Officer attended the hearing and gave evidence on this point. Reference was made to the 2012 appeal decision, however I consider this to be reasonable insofar as the history of the site and previous assessments of character are material considerations.
21. I find that the Council did not behave unreasonably in having regard to the previous appeal decision. I do not find that the reference to 'tranquillity' was based solely on the 2012 decision, and was discussed at length by the Council officers in defence of the reason for refusal. Therefore an award of costs would not be justified.

Conclusion

22. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified in relation to fees for attendance at the

adjourned hearing on 4th February by the Appellant's Agent, Barrister and Transport Agent, and the time associated with the preparation of evidence by the Appellant's Transport Agent for the appeal, and his attendance at the hearing.

Costs Order

23. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Section 7(2) and Schedule 3 of the Countryside and Rights of Way Act 2000, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the London Borough of Barking & Dagenham shall pay to Mr G Chowdhury, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to fees for attendance at the adjourned hearing on 4th February by the Appellant's Agent, Barrister and Transport Agent, and the time associated with the preparation of evidence by the Appellant's Transport Planner for the appeal, and his attendance at the hearing; such costs to be assessed in the Senior Courts Costs Office if not agreed.
24. The applicant is now invited to submit to the London Borough of Barking & Dagenham, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J Ayres

INSPECTOR