The Planning Inspectorate

Costs Decisions

Hearing Held on 12 & 13 October 2021

Site visit made on 27 July & 19 October 2021

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 December 2021

Costs application in relation to Appeal Ref: APP/Y1110/W/21/3270745
Land off Ikea Way, Exeter EX2 7RX

- 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 Bovis Homes (part of Vistry Group) for a full award of costs against Exeter City Council.
- The hearing was in connection with an appeal against the refusal of planning permission for the erection of 200 dwellings (use class C3), means of access, public open space and associated infrastructure.

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Decisions

1. The applications for an award of costs are refused.

Procedural matter

2. Although made and responded to during the Hearing, the applications were both made in writing followed by written rebuttals and final comments.

Reasons

3. 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.

4. The planning application was refused for 3 reasons. In summary, the first alleged that there were shortcomings in design, the second that there was insufficient information in respect of a number of matters, and the third that there was no planning obligation to secure contributions that the Council deemed necessary to make the development acceptable in planning terms.

5. In respect of the first reason, various amendments to the proposal were made in effort to address the Council's concerns. While the appellant considers that the issues being raised were somewhat vague and difficult to respond to, the

case officer’s report and appeal submissions make the alleged harm clear. Although I have not found that there would be design failings in respect of all of the issues raised by the Council, there would be significant and demonstrable harm overall.

6. In respect of all of the matters raised in the first reason for refusal, evidence has been produced to substantiate the alleged harms and, therefore, unreasonable behaviour has not occurred.

7. Conversely, the second reason is expressed in vague terms. At the time of the case officer’s report, there appear to have been outstanding queries from some of the consultees. However, that does not absolve the Council of responsibility to rigorously assess the issues raised to determine whether harm would arise and, if so, whether planning conditions could be used to overcome those harms.

8. By the time of the Hearing, there was no substantive evidence that harm would ever have arisen to railway or highway safety. Its existence as a reason for refusal is, therefore, unreasonable behaviour. However, it has not been demonstrated that the appellant was put to unnecessary or wasted expense in dealing with this particular minor matter, and the Council’s position was clarified before the Hearing.

9. In terms of other matters, additional information was submitted with the appeal documents. The Council failed to acknowledge the updated evidence provided with the appeal proposals in their statement of case, as might be expected through ongoing, proactive, case management. The Council’s position subsequently remained unclear at the time of the first statement of common ground, despite my request to clarify matters at that time. The apparent lack of engagement on these outstanding matters constitutes unreasonable behaviour.

10. In respect of air quality and noise, though, the concerns of the consultees did need to be addressed and were ultimately confirmed to be undisputed prior to the hearing. The preparation of the information in the first place was not wasted expense and there is no clear evidence of additional wasted expense on the part of the appellant between the initial submissions of clarification and final agreement through the Statement of Common Ground addendum.

11. While the drainage scheme may not have been designed to the most desirable sustainable urban drainage solution, that does not in itself mean that demonstrable harm would arise from the proposal. Nevertheless, if I had agreed with the Council’s broad concerns over the principal of the design, it is unlikely that conditions could have been used to make the proposal acceptable. Moreover, without clear justification for the proposed alternative scheme, it is not unreasonable for the Council to seek the best solution. Such justification was not fully apparent until the Hearing and so I find that the Council’s behaviour had not been unreasonable.

12. On the third reason for refusal a number of contributions were requested. While the appellant may have raised concerns about some of them at application stage, there was no indication at the time of lodging the appeal, that there was still dispute, following due consideration of the case officer’s report. Nevertheless, the Council would be expected to justify and confirm the lawfulness of the contributions at appeal stage and it is not unreasonable for

the appellant to submit evidence about them in explaining the construction of the planning obligation.

13. However, what appears to have come as something of a surprise is the appellant's suggestion that the development cannot afford to pay all of the contributions. The Council's position on the required contributions is set out clearly in the Decision Notice. In response, the appellant indicated that the third reason would be addressed during the appeal proceedings. That, to me, indicates acceptance of them, or at least, that they could be addressed in full if I were to find the obligations to accord with the relevant legislation.

14. Against this background, the matter of viability was raised very late in the day by the appellant at final comments stage, alongside a draft planning obligation. The appellant seeks to blame this on uncertainties over the appeal procedure, but even if the Hearing procedure had been followed from the outset, there is no indication that the Council would have been made aware of the appellant's position on viability any sooner. Indeed, the Hearing timetable would ordinarily require the provision of a planning obligation only 10 days before the event[1].

15. If viability had been raised during the application process, the Council indicates that, in accordance with its Planning Obligations Supplementary Planning Document, it would not expect to cover the costs associated with its assessment of any appraisal. Whether or not that is the case, it is clearly the Council's decision whether or not to employ people to defend a particular argument advanced by an appellant in the appeal process. The two situations are not comparable.

16. Nevertheless, until final comments stage in the (then) written representations procedure, the Council would have not expected any defence of this matter. Indeed, under that procedure, whatever the appeal outcome, the Council would have considered its work on the case complete by that stage. The behaviour of the appellant in this regard was, therefore, unreasonable.

17. As it happens, I have not had to make a finding in respect of viability. That does not mean that the Council's expense was unnecessary as, due to my findings in respect of contributions to healthcare and the appellant's viability position, such interrogation would have been required in other appeal outcomes. Therefore, while the timing with which the issue was introduced was unreasonable, and even if it is true that the appellant did not facilitate discussion over some of the issues raised, the need to deal with it was necessary. It does not, ultimately, amount to unnecessary or wasted expense in the appeal process.

18. Both parties have behaved unreasonably in some regards. However, that behaviour has not resulted in unnecessary or wasted expense in the appeal process.

19. The applications are, therefore, refused.

M Bale

INSPECTOR

[1] The Planning Inspectorate: Procedural Guide, Planning appeals – England (March 2021)