



Costs Decisions

Hearing Held on 3 November 2021

Site visit made on 2 and 3 November 2021

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21/01/2022

Costs application in relation to Appeal Ref: APP/Y1110/W/20/3265253 Land at Pennsylvania Road, Exeter EX4 5BL

- 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 Land Allocation Ltd for a partial award of costs against Exeter City Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for an outline application including access, with all other matters reserved, for up to 26 (maximum) residential dwellings.
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Decision

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

Procedural Matter

2. An application for costs was also made by Exeter City Council against Land Allocation Ltd. This application is the subject of a separate Decision.

The submissions for Land Allocation Ltd

3. The submission was made in writing. In summary, the applicant considers the Council has behaved unreasonably by introducing fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen. In addition, the Council provided information that the applicant considers is manifestly inaccurate or untrue.
4. The Council submitted late evidence after the close of the Hearing on 3 November 2021 in relation to its five year housing land supply position. This has caused the applicant to incur unnecessary and wasted expense in the appeal process in both objecting to the introduction of the late evidence and providing a rebuttal to it. The applicant contends that the Council acted unreasonably by reassessing their housing land supply when these matters had been the subject of discussion at the Hearing and that the evidence should have been provided prior to and at the Hearing itself.
5. In addition, the Council's submission to the Planning Inspectorate on which the Inspector based the decision to accept the late evidence was not as they described it and other additional matters were included which were not specified at the time. The applicant considers that the provided information was therefore manifestly inaccurate and untrue.

The response by Exeter City Council

6. The response was made in writing. After the Hearing, the Council asked the Inspector if it could submit its updated five year housing land supply position given its relevance to the matters that had been discussed at the Hearing. The Inspector agreed that it could be submitted stating that it was considered material. This was disputed by the applicant who asked to see the evidence. This was then submitted. The Council considers it did not act unreasonably as it had asked the Inspector if the evidence could be submitted before it did so. In addition, the applicant's views were known by the Inspector before the Council was allowed to submit the evidence.
7. The Council also identified a Secretary of State decision and consent order that was material and requested this be taken into consideration. This was relevant to issues brought up at the Hearing and its relevance was unknown before then. The Council does not consider that it would have been professional or ethical to not disclose this information to the Inspector once know.
8. The Council does not consider that the evidence it has provided is manifestly inaccurate and untrue. The Inspector had and has the discretion on whether to accept the late evidence or not. The applicant was copied in on relevant emails and given the opportunity to present their views on it. The Council does not consider it has behaved unreasonably.

Reasons

9. 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 expense in the appeal process.
10. The PPG advises at paragraph 47¹ the types of behaviour that might give rise to an award of costs against a local planning authority on procedural grounds. This includes introducing fresh and substantial information at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.
11. Following the Hearing which was closed on 3 November 2021, the Council advised me that it had recalculated the housing land supply figure on the basis put forward by the applicant. This gave a new figure of 6 years and 1 month and a revised base date of 6 September 2021. The Council requested that the late evidence be considered in view of how implicit this issue was to the appeal.
12. I sought the views of the applicant on whether this late evidence should be accepted and gave them the opportunity of making written representations or of requesting the re-opening of the Hearing.
13. Whilst I noted the applicant's objections to the submission of the late evidence, I nevertheless gave the Council permission to submit it given that the five year housing land position was material to the appeal decision. The evidence was only then submitted. In addition, the Council included a decision of the Secretary of State in respect of Woburn Sands, Buckinghamshire² which it

¹ Paragraph: 047 Reference ID: 16-047-20140306

² APP/Y0435/W/17/3169314

- asked me to take into account. This decision supported the Council's position that evidence after the cut-off date could be taken into account.
14. The Council advised that it had recalculated its five year housing land supply on the basis of the discussions at the Hearing and the applicant's argument that the base date should be the same as the cut-off date for the assessment of delivery. The Council also advised that in addition to the new base date, an increased yield for one of the sites, The Harlequin Centre, Paul Street, had been included.
 15. I accepted the late evidence and gave the applicant the opportunity to provide a written response to this before making a decision as to whether or not the Hearing should be reopened. My assessment of the late evidence and its relevance to the appeal is included in my appeal decision and I do not repeat it here.
 16. The submission of the revised five year housing land supply position hinged upon the argument as to whether the Council could take into account evidence of delivery from after the cut-off date for the assessment of whether a site would be deliverable. At the Hearing, the matter of the cut-off date was discussed. However, it was also included in the applicant's Addendum Statement submitted prior to the Hearing and was not therefore an argument introduced at the Hearing that the Council could not have considered and prepared for in advance. It was therefore unreasonable of the Council to have not responded to this at the Hearing.
 17. Furthermore, in revising its five year housing land supply position, in addition to rebasing the five year housing land supply period and increasing the yield from the Harlequin Centre, it also included additional completions, sites, site evidence and an altered housing trajectory. The Council's explanation of the late evidence did not set out this level of detail. However, as an updated five year housing land supply position it is not unreasonable to expect some of this information to be included.
 18. The Woburn Sands appeal decision was not made known to me when the Council requested that it provide a rebased five year housing land supply. I understand the Council's reasons for submitting this decision. However, in not informing me of its intention to also include this information as part of its late evidence, I find the information submitted to me about the late evidence was manifestly inaccurate.
 19. I have nonetheless accepted this evidence as I recognise that it is of relevance to the appeal and the applicant has been given the opportunity to respond. Nevertheless, given that the Council must have known that matters in relation to cut-off dates were a point of dispute, it was unreasonable of it to have submitted this evidence after the Hearing was closed.
 20. The Council in submitting this evidence the day after the Hearing has introduced late evidence that has caused the applicant to have had to undertake further work and incur additional expense in the appeal process, both in setting out its reasons for objecting to the submissions and subsequently rebutting the evidence.

Conclusion

21. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

22. 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 Exeter City Council shall pay to Land Allocation Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in both objecting to and rebutting the late evidence submitted by the Council.

23. The applicant is now invited to submit to Exeter City 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.

Rachael Pipkin

INSPECTOR