



Costs Decision

Site visit made on 23 March 2021

by Chris Couper BA (Hons) DiP TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 April 2021

Costs Decision in relation to Appeal Ref: APP/P0430/W/21/3256435 Land north side of lane leading to Cholsey Grange, Ibstone Road, Ibstone Buckinghamshire HP14 3XT

- The application is made under the Town and Country Planning Act 1990, sections 78, 322d Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr C Kelly (Light Space Land Limited) for a full award of costs against Buckinghamshire Council.
 - The appeal was against the refusal of planning permission for the erection of four 3 bed, 2 storey, traditional dwellings comprising a terrace of three cottage style properties and a single detached dwelling (barn style dwelling), and associated soft and hard landscaping.
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Decision

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

Reasons

2. 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. At ID: 16-049-20140306 it provides examples of types of behaviour that may give rise to a substantive award of costs against a local planning authority.
3. This includes persisting in objections to a scheme, or elements of a scheme, which the Secretary of State or an Inspector has previously indicated to be acceptable; and giving inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The applicant states that this proposal is identical in highway terms to a previous scheme, where an Inspector found there was no reason on highways grounds why the appeal should be dismissed (Ref: APP/K0425/W/19/3226658). He states that the Council was reliant on evidence produced by Ibstone Parish Council ('IPC') which was available to the previous Inspector, and which was, in any event, of dubious provenance.
5. Additionally, he maintains that if the access from Cholsey Grange is substandard for the traffic that would be generated by this proposal, then it must also be for existing traffic; and that the issue of overgrowth obstructing the visibility splay looking north-west along Ibstone Road could be resolved by the Highway Authority ('HA') exercising its powers under the Highways Act.

6. For my part, I note that the proposal would generate up to about 24 vehicular movements each day, and that it would therefore result in additional manoeuvres at the junction of Cholsey Grange with Ibstone Road.
7. The Council as HA has set out that its objection to the scheme is based on the 2.4m x 28m visibility splay to the north-west of the junction, which would be available once overgrowth is cut back. It is clear that its objection would not therefore be resolved by it exercising its powers to remove overgrowth under the Highways Act. Additionally, it is not unreasonable for a Council to consider the impact on highway safety as a result of the intensification of the use of a junction.
8. However, in this case, this is the same issue as was considered, and found to be acceptable, by the Inspector in the previous appeal. With reference to paragraphs 30 and 35 of his decision, it is clear that he considered concerns about the restricted visibility splay at this junction, and the impact of speeding traffic on Ibstone Road.
9. Indeed, IPC's consultation response to that previous application (provided at Appendix A of the appellant's Final Comments) included data in graphic form which concluded that 43% of traffic was 'speeding'.
10. I have been presented with additional data from the HA, collected by IPC, regarding traffic speeds on Ibstone Road, which was not presented to the previous Inspector. However, this local evidence in the form of additional empirical data is not substantially different from the thrust of the evidence that the previous Inspector was presented with when he made his recent decision. Indeed, as set out at paragraphs 17 to 20 of my decision, all the information points to 85th percentile speeds on Ibstone Road somewhere in the mid-30s mph, and average speeds around, or just below, 30mph.
11. Moreover, as set out in my decision, the additional data is for a point a little way north-west of the Cholsey Grange junction, and it is unclear how the Council has reached its conclusion that the local highway conditions result in increases in speed on approach to that junction.
12. From the information before me, I cannot conclude that the Council is relying on information which is manifestly inaccurate or untrue as the applicant alleges. However, I also cannot agree with the Council that the additional datasets clearly contradict paragraph 31 of the previous Inspector's decision, regarding driver behaviour and collision avoidance. Neither do I agree that it is incumbent upon the appellant to collect additional empirical data on traffic speeds to rebut these datasets, when the previous Inspector had clearly concluded that the development would not have an unacceptably adverse effect on highway safety.
13. Whilst the Council suggested highway works to overcome its concerns, its actions in persisting with its objections to this element of the scheme, which an Inspector previously found to be acceptable, is unreasonable, and has resulted in the applicant having to lodge this appeal.
14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

15. 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 Buckinghamshire Council shall pay to Mr C Kelly (Light Space Land Limited), the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to Buckinghamshire 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.

Chris Couper

INSPECTOR