

Costs Decision

Inquiry Held on 7, 9, 10, 11 March 2022

Site visit made on 8 March 2022

by H Butcher BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th April 2022

Costs application in relation to Appeal Ref: APP/G1630/W/21/3280979 Land at Fleet Lane, Twyning, Tewkesbury GL20 6DQ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Newland Homes Ltd for a partial award of costs against Tewkesbury Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for a residential development of up to 52 units and associated works.
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Decision

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

Preliminary Matter

2. Written submissions from Newland Homes Ltd for a partial award of costs were received before and during the course of the inquiry. The Council provided their written responses to these during and after the inquiry.

Reasons

3. The Planning Practice Guidance (PPG) 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. Three counts of unreasonable behaviour have been put to me by the appellant and I deal with these in turn below.

Foul drainage

4. The PPG sets out what type of behaviour may give rise to a substantive award against a local planning authority. This includes not reviewing their case promptly following the lodging of an appeal against refusal of planning permission as part of sensible on-going case management.
5. The Council refused planning permission partly in respect of foul sewage matters. Whilst they were entitled to do this they then withdrew this reason for refusal on 9 November 2021, a number of months after the appeal was lodged and approximately a week before the scheduled exchange of proofs. No additional information other than that submitted with the application was

provided to the Council. Plainly, therefore, the Council had everything before them to review their case in respect of foul sewage more promptly than this.

6. As a result, the appellant, quite reasonably, shortly following the Case Management Conference, where the Council gave no indication of removing the objection in respect of foul sewage, instructed TSD (South West) Ltd to produce a proof of evidence in advance of the upcoming inquiry. However, owing to the later withdrawal of this objection by the Council this proof was not required.
7. The Council's behaviour in this respect was therefore unreasonable and resulted in the appellant incurring wasted expense. This could have been avoided with more pro-active case management on the part of the Council as advocated by the PPG.

Formal presentation of evidence in respect of Housing Land Supply matters

8. Consistency in decision making is important because it serves to maintain public confidence in the operation of the development control system. With this in mind, persisting in pursuing the Council's argument that the housing land supply shortfall would be short-lived, as upon adoption of the emerging Borough Plan they would be able to demonstrate a five year supply of housing land, was unreasonable on the part of the Council. This point was determined by an Inspector only a week before this inquiry. His decision was based on the same evidence base as that which was before this inquiry and no significant changes in circumstances arose during the week.
9. Consequently, a day of hearing evidence, which otherwise could have been used to foreshorten the inquiry in the interests of running an effective and timely planning system, caused the appellant to incur wasted expense in the appeal process.

Housing Land Supply Position Statement

10. It was right for the Council to rely on the most up-to-date information concerning five year housing land supply at the inquiry. More notice might have been given to the appellant, but it seems, from the evidence before me, that even the Council's witnesses were on relatively short notice with respect to the updated 5 year Housing Land Supply Position Statement. Nevertheless, this updated evidence did not materially change either party's case and was simply an update on the figures, and an anticipated one at that. I therefore find no unreasonable behaviour on the part of the Council in this respect.

Costs Order

11. 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 Tewkesbury Borough Council shall pay to Newland Homes Ltd the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in producing evidence in respect of the third reason for refusal on the Council's Decision Notice and Day 3 of the inquiry spent hearing evidence on Housing Land Supply; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to Tewkesbury Borough 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.

Hayley Butcher

INSPECTOR