



Costs Decision

Hearing Held on 8 March 2022

Site visit made on 8 March 2022

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 April 2022

Costs application in relation to Appeal Ref: APP/N1160/W/19/3228647 Land off Colesdown Hill, Plymouth, Devon

- 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 Plymouth City Council for a partial award of costs against Ms Lacey Keating.
 - The hearing was in connection with an appeal against the refusal of planning permission for the change of use of the land to a private gypsy and traveller caravan site consisting of 2 no. mobile homes, car parking and associated development.
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Decision

1. The application for an award of costs is refused.

The submissions for Plymouth City Council

2. The Council seek a partial award of costs. The application has been made in writing at the hearing and, in summary, the Council argue that the appellant has acted unreasonably by failing to supply the necessary information within the required appeal process timeframe, including in some cases also consistently failing to respond to written correspondence requesting missing information.
3. The Council quote from the Procedural Guide: Planning Appeals – England requirements regarding the submission of appeal documents and including that only in exceptional circumstances will late evidence be accepted.
4. It is explained that the original appeal submission was missing some of the appendices to the planning statement. This was noted in the Council's appeal statement and only on the fourth request from the Planning Inspectorate were these appendices supplied. Furthermore, the Landscape Hearing Statement, which formed part of the original submission, was not copied to the Council when the appeal was lodged in May 2019 and only became available to the Council on 2 March 2022.
5. The Council comment that it appreciates that the Planning Inspectorate gave the opportunity for the submission of additional statements from the main parties because of the length of time since the appeal was made and the deadline was given as 4 February 2022. However, the Council explain that the appellant then submitted an Ecological Impact Assessment during the evening of 2 March 2022, leaving just three working days for its consideration. It is explained that this placed undue pressure on the Council to review and assess

this documentation, which was exacerbated by the relevant staff not being available. This situation would have been avoided if the repeated requests for the missing information had been responded to in a timely manner. The Council argue that if this had been the case, the appellant would have known months ago that the information still did not satisfy the Council and the additional documents could have been commissioned at a far earlier stage.

6. The Council consider that this demonstrates unreasonable behaviour and this placed undue pressure on the Council with other work priorities having to be stopped to meet the extremely short deadlines.

The response by Ms Lacey Keating

7. The appellant responded at the hearing and, in summary, considers that there has not been any prejudice to the Council's case nor any additional or wasted expense in the appeal process which has been demonstrated.
8. In terms of the missing documents, it is explained that when the landscape evidence was originally sent the file sizes were too large and they were broken down and sent again. In terms of the missing planning appendices, the Council would have already had the appeal decision for the sites at Ridge Road and the landscape evidence was sent direct to the Planning Inspectorate at the time of the original appeal submission and referred to in the appellant's planning statement. This was picked up by the Council in their preparation but could have been identified at any previous time and once requested was forwarded immediately.
9. With the Ecological Impact Assessment, the ability to submit further evidence was actioned in a timely fashion following the Planning Inspectorate letter of 29 December 2021. The previous ecologist had retired and when this was discovered the appellant made all endeavours to find a new ecological consultant. The Council was alerted in about mid-February when the Statement of Common Ground was being discussed that a further report had been commissioned.
10. The appellant argues that in any event the Council's work associated with the Ecological Impact Assessment would have been the same whenever it was received. The case is made that it is a short and concise document that reached the same conclusions as the previous report and the relevant Council Officer was able to respond in detail at the hearing. The appellant makes the point that the Ecological Impact Assessment was accepted as part of the hearing documents and, together with the other documents that the Council had to subsequently consider and respond to, there was no prejudice or additional costs as these documents would have been required to be analysed by the Council at some stage in the process in any case. Consequently, it is argued by the appellant that the case for an award of costs has not been demonstrated.

Reasons

11. The Planning Practice Guidance (the Guidance) advises, regardless of the outcome, costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

12. The Guidance gives examples of the types of behaviour that may give rise to a procedural award against an appellant. These include delay in providing information or other failure to adhere to deadlines, and introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.
13. With this appeal, the missing appendices from the appellant's planning statement were requested on a number of occasions and the response was tardy in supplying these details. However, I accept that the missing appeal decision would have been in the possession of the Council. With the Contaminated Land Report, the Council had not needed to undertake any material level of work on this document before its arrival and once received the Council was able to take advice and confirm that the Report met with its requirements. There was no additional expense in this respect as this work took place only once and was necessary and reasonable.
14. The Council was able to respond to the details of the 2018 Ecological Report in its additional planning statement prior to the hearing. The Council had not needed to undertake this work previously as it did not have the report before it. The Council identified in its judgement a number of deficiencies and these were then alerted to the appellant. Although it would have been much preferable for the Council to have had this information earlier, nevertheless, I am not persuaded that this resulted in a material level of additional or wasted expense for the Council.
15. With the missing Landscape evidence, this should have been copied to the Council at the original appeal submission stage by the appellant, but it appears that as it was submitted separately this was not undertaken. The Council identified the missing evidence when preparing for the hearing and therefore only needed to address the issues raised at that point. Again, these documents should have been before the Council from the outset, however, the Council was able to make submissions at the hearing to cover the points raised in this evidence.
16. In terms of the additional Ecological Impact Assessment submitted in March 2022, it appears that the Council was aware that it was likely to be submitted although it was received close to the hearing date. As the appellant explains, this latter report is in many respects similar to the previous ecological report and because of the time it was commissioned a protected species survey identifying any bat presence and activity was not able to be undertaken. Because of the delay in supplying the original report, the views of the Council was then not before the appellant until later in the process and therefore ultimately there was less time for the appellant to respond and undertake surveys. This appears to have affected the appellant's case more than the Council's.
17. While I can appreciate that the Council needed to respond in a very short period of time in preparation for the hearing, and this would have caused inconvenience, the submission of the Ecological Impact Assessment before the hearing helped clarify the position of the main parties and focused the discussion at the hearing. Despite the inconvenience to the Council, it was able to respond in detail and without the need for an adjournment. This was necessary work that it undertook and was not wasted time or expense in the appeal process. Given the age of the previous report, it was not unreasonable

for the appellant to seek to place before the hearing evidence of the latest position regarding biodiversity on the site.

18. The progress of the appeal was severely disrupted by the Covid pandemic which meant that the hearing was sought to be scheduled, delayed and then rescheduled on a number of occasions. This meant that by the time of the hearing the original ecological report was considered out of date. The Council would have found objection to that original report in any case, but in the normal course of events it would not have been necessary to commission a further report of a similar nature. I consider that this background is an extenuating circumstance that should be borne in mind with the consideration of the costs application.
19. Drawing all these matters together, the appellant should have acted more swiftly in supplying the missing documents and this would have led the Council to having earlier sight of some of the evidence. However, it seems to me that the Council in the absence of the evidence did not have to expend material time on those subject matters and then only needed to do so once the documents had been received. While it would have been inconvenient to examine the documents so close to the hearing date it was able to successfully do so and present a detailed case at the hearing. I do not consider that the information has clearly demonstrated that it was necessary to undertake extra expense for preparatory works that would not have otherwise arisen at some point during the normal course of an appeal. I am not persuaded therefore that the actions of the appellant led to a material level of unnecessary or wasted expense in the appeal process.
20. As a result of the above, it follows that in terms of the issues raised by the Council in the costs claim, while I have identified that the appellant should have been timelier in the supply of documents, overall I am not satisfied the actions of the appellant were sufficient to meet the bar of unreasonable behaviour, given all the background circumstances. In any case, I am not persuaded by the information before me that the Council incurred unnecessary or wasted expense in the appeal process as a result of the actions of the appellant.

Conclusion

21. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has not been demonstrated and an award of costs is not justified.

David Wyborn

INSPECTOR