
Costs Decision

Inquiry Held on 15 September 2020 – 23 September 2020

Site visit made on 21 September 2020

by R Norman BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 April 2022

Costs application in relation to Appeal Ref: APP/R0335/W/20/3245185 Land adjacent to Newell Hall, Warfield Street, Warfield, Bracknell

- 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 Bracknell Forest Borough Council for a partial award of costs against Mr Passmore, Hawksbury Homes Warfield Ltd.
 - The inquiry was in connection with an appeal against the refusal of outline planning permission for the erection of a 45no. bedroom care home (detail of access submitted).
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Decision

1. The application for a partial award of costs is refused.

The submissions for Bracknell Forest Borough Council (the Council)

2. The Council's case, in summary, relies on the changes and negotiations that were required as a result in relation to the drainage strategy and the timings of the various iterations of the plan related to the strategy. The Council is of the view that this led to issues with the provision and agreement of the legal agreement and the need for the Council to carry out further work above and beyond the initial position throughout and beyond the scheduled Inquiry time. The Council states that they were required to repeat their legal submissions and comments on more than one occasion and the Appellant changed course throughout the discussions.
3. The Council outline that there was an approved drainage strategy contained within the approved Flood Risk Assessment¹ which included agreement from the downstream landowners, and they advise that the Appellant had agreed to secure the necessary legal rights to implement this strategy. Following this, the Council noted that the easement plan² attached to the draft Section 106 (S106) did not include all of the land needed to accord with the then approved strategy. Subsequently, Revision 7³ of the Plan was submitted.
4. The Council responded with concerns to this revision and consider that this and the subsequent iterations to the plan were as a result of the need to fit the drainage arrangements into the land identified in the draft easement. The Council were also of the view that the easement was not fit for purpose and the

¹ Version 5 – CD2.3 Flood Risk Assessment and Drainage Strategy RAB: 2134B

² August 2020 version – Appendix 1 of Council's Costs Application

³ RAB2134B/001 rev 7

necessary rights had not been secured as works were being undertaken outside of the area.

5. It is the view of the Council that the Appellant also behaved unreasonably in requiring the provision for further submissions, including legal matters, to be exchanged between the parties following the Inquiry. In addition, the Council were unable to agree the S106 on the basis of the drainage strategy as it stood at the time, and one which had changed from the originally agreed strategy within the FRA.
6. Furthermore, the Council were required to consider additional information and a plan in October which was presented to them on the day which the Closing Submissions were due which necessitated further work in relation to a number of matters.
7. The Council are therefore of the view that unnecessary and wasted expenditure has occurred in relation to officer time (relating to several different officers) in dealing with a number of revisions to the drainage strategy and related S106 matters, Counsel time in relation to legal submissions and Counsel time in relation to amendments required to their closing submissions due to the changes in circumstances.

The response by Hawksbury Homes, Warfield Ltd (the Appellant)

8. In summary, the Appellant is of the view that the submission of new drainage plans was an appropriate step to reduce the total length of drainage works and excavation off-site and to avoid works within the root protection areas (RPAs) of protected trees⁴. The original strategy required pipework to pass through the RPAs of a number of protected trees. Furthermore, the revised drainage route kept the pipework within the red line boundary, a matter which the Appellant considers addressed part of the Council's earlier concerns.
9. The Appellant considers that the draft documents provided evidence that the relevant landowners were supportive of the drainage works, confirmed through the subsequent Options Agreements and Statutory Declaration, and state that the Council refused to accept this evidence. In addition, the iterations of the drainage plan were progressed to bring the headwall back into the red line.
10. The Appellant was also of the view that a Grampian Condition⁵ could have been used to address matters relating to off-site drainage, which they state was resisted by the Council, as was the use of a detailed tree condition. The Appellant also points out that only 1% of the drainage works would be within the RPAs.
11. In terms of the correspondence between the parties, the Appellant considers the short notes relating to drainage and arboricultural matters did not provide the full commentary that was agreed in order to allow them to provide a suitable and full response to the Council's concerns. The Council's response which accepted the Appellant's drainage proposals was only provided on 19 October 2020, only after which the necessary strategy could be provided, and conditions agreed.

⁴ TPO No. 1338 dated 22 July 2020

⁵ Planning Practice Guidance Paragraph: 009 Reference ID: 21a-009-20140306

12. The Appellant is of the view therefore that the proceedings were prolonged as a result of the Council's conduct and refusal to sign a S106 Agreement during this time, their refusal to accept conditions relating to drainage and tree protection and failure to provide an indication as to the drainage route that would be acceptable.
13. Furthermore, the Appellant notes the various logistical challenges arising from Covid-19 restrictions, resulting in delays of securing agreements of documents.
14. In addition to the above points, the Appellant is also of the view that the Council, in their costs submission, have failed to identify the specific period of time concerning item (a) relating to officer costs.

Reasons

15. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and where the unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process⁶. Costs can be either procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal⁷.
16. The PPG sets out a number of examples where a party is at a risk of an award of costs. These include where a party has prolonged the proceedings by introducing a new ground of appeal or issue⁸.
17. Whilst I note that there was an agreed drainage strategy and plan included within the approved FRA, I can understand the Appellant's reasons for wanting to amend the scheme, particularly in relation to its impact on the RPAs of the protected trees. It appears to me that agreement from the adjacent landowners was evident from some of the earlier stages of negotiation, including the discussions that took place around April 2020 and the Appellant's submissions highlight the number of Trustees and external parties involved which gave rise to some complexities.
18. I have had regard to the negotiation timelines provided by both the Council and Appellant, particularly in light of the lockdowns and regularly changing situations as a result of the pandemic. Whilst I note that much of the correspondence and discussion could take place remotely and electronically, I accept that the restrictions would have likely impacted upon people's availability and abilities to progress matters.
19. I have had regard to the level of discussion that took place over the course of a number of months, where it appears that the parties were each responding proactively to each other's proposals and/or concerns and it seems to me that, whilst the Council were understandably concerned and not wholly satisfied with a change from the agreed strategy, the Appellant's reasons for this were nevertheless robust and the complexity of the issues resulted in an unavoidable number of negotiations and amendments.
20. Whilst the negotiations were lengthy and required additional work this, in my view, is reflective of the technical and detailed nature of the matters in

⁶ Planning Practice Guidance Paragraph: 030 Reference ID: 16-030-20140306

⁷ Planning Practice Guidance Paragraph: 031 Reference ID: 16-031-20140306

⁸ Planning Practice Guidance Paragraph: 052 Reference ID: 16-052-20140306

question as well as their implications for legal constraints and matters. Furthermore, whilst the Appellant was content that the issues could have been dealt with by suitably worded conditions, they continued to negotiate and work towards an agreed solution in light of the Council's disagreement to proceed by way of condition. Notwithstanding the outcome of the appeal, whether dealt with via condition submissions, reserved matters applications or as part of the Inquiry submissions, the discussions would have been required to have taken place at some stage, therefore I am not of the opinion that this led to any wasted expense or unreasonable behaviour.

21. Consequently, I find that, although they led to lengthy discussions, the Appellant had justified reasons for making the changes. As a result, and taking into account all of the timelines and evidence provided by both parties, in relation to all three grounds raised by the Council, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that a partial award of costs is not justified.

R Norman

INSPECTOR