
Costs Decision

Site visit made on 21 March 2022

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2022

Costs application in relation to Appeal Ref: APP/K0425/W/21/3279273 Rectory Cottage, Ibstone Road, Ibstone HP14 3XZ

- 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 Mr & Mrs N Storey for a full award of costs against Buckinghamshire Council - West Area (Wycombe).
 - The appeal was against the refusal of planning permission for development described as 'outline planning application for two detached dwellings and associated garaging with all matters other than access reserved for later consideration'.
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Decision

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

Reasons

2. 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.
3. The PPG sets out that the aim of the costs regime is to, amongst other things, encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay. The applicants assert that had the Council done this, then an appeal would not have been necessary.
4. The PPG sets out that a costs application can be made on both procedural and substantive grounds and provides examples of the types of behaviour that would be unreasonable in this regard.
5. The applicants have applied for a full award of costs on both grounds. They have also applied for a partial award of costs in respect of reasons 3 and 4.

Procedural Grounds

6. The award of costs on procedural grounds is made on the basis that the Council did not cooperate with the applicants, delayed in providing information, and failed to raise matters with the applicants prior to issuing a decision.
7. The applicants assert that the Council did not adopt a proactive and supportive approach to find solutions. However, the principle of the development was not

accepted by the Council. Therefore, it is not clear how an appeal in these circumstances could have been avoided.

8. Had the applicants entered into pre-application discussions with the Council prior to submission, then the matters in dispute in relation to reasons for refusal 3 and 4, in relation to trees and ecology, may have been resolved, thereby narrowing the matters at appeal. The applicants chose not to pursue this approach.
9. The Council was under no obligation to engage throughout the 'live' planning application process. In support of its position, it has referred me to a costs decision¹ in relation to an appeal at Land to the south of Willotts Farm. In this case, the Inspector held that the duty to assist only applied to a pre-application situation, referring to the absence of any requirement to enter into discussions with an applicant to resolve problems in a 'live' application under section 70 of the Town and Country Planning Act 1990 (as amended).
10. The Inspector was correct that there is no legal duty to do so. I concur with the conclusions of this Inspector. Furthermore, it seems to me that if there were then a subsequent requirement to work on live applications, could unduly extend the time taken to determine an application.
11. The applicants consider that had the Willotts Farm Inspector's approach to decision-making been the Government's intention, then the Framework would have been changed to reflect this. However, I note the costs decision was made in the context of the 2012 Framework which is broadly consistent with the approach advocated in the 2021 Framework in this regard. This does not therefore alter my conclusions.
12. I appreciate that the application was validated by the Council without detailed ecological information or tree information. However, this was on the basis of the Ecology and Trees Checklist which suggested these would not be affected by the development. It was not unreasonable of the Council to subsequently seek additional information once the circumstances of the site were better known. Moreover, there was nothing unreasonable in the Council refusing the application prior to these matters being resolved, particularly as there were other reasons for refusal.
13. I recognise the applicants' frustrations about the time taken to determine the application. This was nearly seven months despite no extension of time being agreed or requested. I also note that throughout the application process the applicants made attempts to contact the Council to seek updates on the application and any issues with it. In this regard, the absence of publishing internal officer responses on the Council's website was not helpful.
14. Notwithstanding this, it is evident that discussions in relation to reasons 3 and 4 did take place. I note that the applicants were encouraged to resolve these matters through a separate planning application, which did not occur. Whilst there is nothing before me to suggest that the applicants agreed that the Council's concerns on these matters had any merit, they would have nevertheless been aware of the Council's position.

¹ Costs application in relation to Appeal Ref: APP/K0425/W/17/3188084

15. I do not find that the Council did not take into account previous appeal decisions, notably in relation to the Cholsey Grange appeals². The officer report and subsequent appeal statement provides commentary on this. I discuss this further below.

Substantive Grounds

16. On substantive grounds, the applicants consider the Council did not behave acceptably in relying on vague assertions about impact unsupported by any objective analysis; refusing planning permission on a planning ground capable of being dealt with by conditions; not determining similar case in a consistent manner; refusing to enter into discussions when a helpful attitude would probably have resulted in the appeal not being necessary, this especially in relation to the Council's position on ecology and trees; not reviewing the case following the lodging of the appeal, particularly as objections raised in the reasons for refusal were then answered; and the failure to take onboard factual information in particular in relation to how policy should be interpreted from an earlier appeal.
17. The applicants consider that the Council's reasons for refusal are not sufficient and supported by evidence. Within this, they consider that the Council should have ensured that matters which arise from caselaw, such as the planning history of the site as well as decisions in the vicinity, are considered. In this regard, the applicants have particularly referred to appeal decisions at Cholsey Grange.
18. The Council referred to the Cholsey Grange decisions which it recognised as material considerations. It acknowledged the Inspector's approach but set out clear reasons as to why it disagreed that the approach should be applied in this case.
19. It is the applicant's view that the approach adopted by the Council in the application of its Policy DM44 is considered unreasonable, in that it allows for exceptions to apply but then, through the restrictive nature of the policy, restricts the exception by not allowing it in a village without a settlement boundary. The applicants' argument here is twofold, Firstly, it appears that the applicant considers that the policy itself is unreasonable unless applied in the way the Cholsey Grange Inspector applied it; and secondly, that it is inconsistent with the Framework.
20. It will be seen from my decision that I also do not agree with the approach to the application of Policy DM44 taken by the Cholsey Grange Inspector. On this basis, I do not find that the Council has behaved unreasonably in similarly rejecting that approach.
21. I appreciate that consistency of approach in how policy is interpreted and applied is important in providing certainty in the planning process. However, if the Council disagrees with how the policy has been applied but has not challenged it for valid reasons, it seems to me that it is open to the Council to apply the policy in the way in which it intended it to operate. As I set out in my decision, I do not consider the second Cholsey Grange Inspector necessarily endorsed the approach. It follows that, in this regard, I do not consider the Council has behaved unreasonably.

² APP/K0425/W/19/3226658 and APP/K0425/W/20/3256435

22. The applicants have questioned why the Council would rely on an Inspector's conclusions in relation to a costs decision but has rejected them in relation to an appeal for a similar development within the same settlement, the Cholsey Grange appeals. However, the matters in dispute and the points they raise are not comparable. The Council has explained its reasons for not agreeing with the Cholsey Grange Inspector.
23. The applicants consider that the effects of the proposed development should have been properly assessed in terms of their impact on the AONB and not simply on the basis that the appeal site was in the AONB. They have argued that the Council failed to adopt the more comprehensive approach to the assessment of the effect on the AONB. They consider this was correctly applied by an Inspector in an appeal decision³ for development at the Old Red Lion, High Street, Great Missenden and have referred to this in their submissions.
24. Harm to the AONB is not confined to long distance views, therefore the Council in finding harm in local views did not behave unreasonably. It considered harm to the AONB arose from development within the gap between characteristic development clusters and the resultant continuous linear development that would arise. Its reasons for concluding this would be harmful were clearly set out. The fact that the applicants did not agree with the Council's conclusions on this matter, does not mean the Council was wrong or unreasonable. This is a matter of planning judgement.
25. I appreciate that in the Great Missenden appeal no harm to the AONB was found. However, the 2 sites display different characteristics in terms of their enclosure and therefore their relationship and contribution to the AONB. In such circumstances, there was no requirement for the Council to draw the same conclusions as the Great Missenden Inspector did. The Council was entitled to reach its own conclusions on the case before it based on the merits of the case. This is what it did. There is nothing unreasonable in this approach.
26. The applicants consider that they have fully addressed reasons for refusal 3 and 4 within their appeal submissions and that the Council is unreasonable in continuing to defend these. On the basis that the appeal scheme was made in outline, requiring the level of detail sought by the Council is unreasonable. They consider it could have been addressed by a planning condition. To support their view, they have referred to case law⁴ which established that it is only where detail is provided that is inherent in meeting the proposal applied for that it becomes relevant. Furthermore, the reference to the Environment Act 2021 (the EA) which does not come into force until 2023 is unreasonable. On this basis, costs should be awarded either as part of a full award or partially, in respect of this part of the appeal.
27. The PPG⁵ sets out that an application for outline planning permission allows for a decision on the general principles of how a site can be development. In the circumstances of the appeal site, where it has been indicated that protected species exist and a biodiversity net gain would be required, it was not unreasonable of the Council to expect survey work to be completed at the outline stage. This would be used to inform any decision to develop the site, identify any necessary mitigation and to establish a baseline against which any

³ APP/X0415/W/18/3202026

⁴ Crystal Property (London) Ltd v Secretary of State [2016] EWCA Civ 1265

⁵ Paragraph: 005 Reference ID: 14-005-20140306

biodiversity net gain could be measured. Such an approach is also supported by Government Circular 06/2005: Biodiversity and Geological conservation – Statutory obligations and their impact within the planning system.

28. It is evident that the Council reviewed the information submitted and found it to be insufficient to address its concerns. I have reached the same conclusion. There is nothing unreasonable in this, given that the effect on ecology and biodiversity affects the principle as to whether the site would be developable.
29. In terms of the reference to the EA. It is clear that the Council recognised that this is not operational. It is referred to in the context of seeking a biodiversity net gain, which is required but not quantified in Policy CP10 of the Wycombe District Local Plan 2019. Reference to this is not unreasonable and the Council did not rely on the EA to refuse the application.
30. With regards to the effect on trees, I have found that the proposed development would be harmful. I have based this on the layout drawing and its encroachment into the indicative tree canopy. Even noting that this layout may change, as I find in my decision, the quantum of development on this site make it likely that there may be inadequate space for the development. However, since no detailed arboricultural survey has been undertaken, a precautionary approach is not unreasonable, such as taken by the Council and subsequently by me.
31. Given the circumstances of the appeal proposal, it was not unreasonable of the Council to refuse planning permission on these 2 grounds rather than leaving these to be resolved through a planning condition.
32. I am satisfied that the Council has not behaved unreasonably either procedurally or substantively. I am therefore satisfied that the Council acted reasonably in refusing the application and the applicant has not incurred unnecessary or wasted expense in the appeal process.

Conclusion

33. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs, either partial or full, is therefore not justified.

Rachael Pipkin

INSPECTOR