
Costs Decision

Hearing Held on 13 October 2021 and 29-30 March 2022

Site Visit made on 30 March 2022

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th May 2022

**Costs application in relation to Appeal Ref: APP/L3815/W/20/3255383
Earnley Concourse, Clappers Lane, Earnley, Chichester, West Sussex
PO20 7JN**

- 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 Summix ECC Developments Limited for a partial award of costs against Chichester District Council.
 - The hearing was in connection with an appeal against the failure of the Council to give notice within the prescribed period of a decision on an application for outline planning permission for a proposed development described as 'the demolition of Earnley Concourse buildings, Elm Lodge and Gate Cottage, and replacement with residential development of up to 30 no. dwellings with associated access and footway works, landscaping, open space and drainage infrastructure'.
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Decision

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

Reasons

2. The application for an award of costs was made in writing and alleged procedural failings in respect of the Council's conduct. Irrespective of the outcome of the appeal, the Planning Practice Guidance (PPG) states that an award of costs may only be made 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 PPG¹ lists examples of unreasonable behaviour that may result in a procedural award of costs and this includes the local planning authority failing to notify the public of a hearing, and this leading to the need for an adjournment.
4. In this instance, it transpired shortly before the hearing was due to open on the 13 October 2021 that the Council had failed to notify the Royal Society for the Protection of Birds, which is an adjoining landowner, of the hearing. Moreover, Historic England had not been consulted on the application and the Council had failed to confirm its position regarding the consultation response submitted by National Highways on the 2 December 2019, which the Council submitted late

¹ Paragraph: 047 Reference ID: 16-047-20140306

to the hearing. Accordingly, it was necessary to adjourn the hearing on the 13 October 2021.

5. Because of this, the appellant incurred wasted expense in attending the hearing on the 13 October 2021. Moreover, during the adjournment the Council's position on its ability to demonstrate a five-year housing land supply evolved from that previously agreed. This required the appellant to prepare new evidence on the matter, which is unlikely to have been necessary had the hearing progressed on the 13 October 2021.
6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has occurred. Therefore, a partial award of costs is justified.

Costs Order

7. 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 Chichester District Council shall pay to Summix ECC Developments Limited the costs of the appeal proceedings described in the heading of this decision in so far as they relate to attendance of the adjourned hearing on the 13 October 2021 and the need to subsequently provide updated five year supply evidence; such costs to be assessed in the Senior Courts Costs Office if not agreed.
8. The applicant is now invited to submit to Chichester District 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.

Graham Chamberlain,
INSPECTOR