
Costs Decision

Site visit made on 25 April 2022

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 May 2022

Costs application in relation to Appeal Ref: APP/E2734/W/22/3293545 Woodland View, York Road, Flaxby HG5 0RR

- 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 Ben Holmes on behalf of Holmes Planning Ltd for a full award of costs against Harrogate Borough Council.
 - The appeal was against the refusal of outline planning permission for a development of up to 9 eco custom self-build homes.
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Decision

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

The submission by Mr Ben Holmes on behalf of Holmes Planning Ltd

2. The applicant submits that the Council failed to have any regard to previous Decisions he had supplied, and that this led to the unnecessary administering of the appeal and preparation of further evidence. It is also argued that the Council supplied information which is manifestly inaccurate or untrue and it is alleged that there have been discrepancies in the Council's communication of its custom and self-build ("CSB") position. It is stated that the Council has ignored its own guidance in respect to mechanisms for securing CSB delivery. The applicant considers that the Council introduced revised CSB register entry requirements which he states are draconian and represent an attempt to artificially suppress demand for this housing product.
3. The applicant also contends that the Council did not provide information requested including its CSB calculation and standard form ("SPUR") for Unilateral Undertakings ("UUs") in a timely manner, and that led to multiple requests. It is also argued that the Council delayed advising on deficiencies of a proposed UU and failed to give advance notice of the legal fees that would be chargeable for the preparation of a section 106 legal agreement to remedy these. It is argued that legal fees associated with the executed UU could have been avoided had that response been timelier. It is also argued that should a section 106 legal agreement be deemed necessary to secure the affordable housing obligation, then the fee is unreasonable as it should be proportionate to reflect the coverage of the UU.

The response of Harrogate Borough Council

4. The Council advises that the case officer read through the appeal decisions and researched others as part of the determination process and maintains that it

has had regard to all material planning considerations. It states that it provided information which is accurate and describes the measures taken. The Council argues that its review of the CSB register, and update of the demand and supply data is appropriate and sets out its rationale in this regard. It also explains why it has not ignored its own published guidance in respect to mechanisms for securing CSB delivery. The Council maintains that it did provide the applicant with its CSB calculation and other available information in a timely manner. It describes why it considers no unnecessary delay in collaborating in the preparation of the planning obligations occurred and maintains that the fees sought are justified and reasonable.

5. Consequently, the Council asserts that it has not acted unreasonably in any respect and that the applicant's allegations are unfounded. It has respectfully requested that the application for costs is refused.

Reasons

6. The Council's officer report does not make reference to the Decisions advanced by the applicant, but the Council has described its actions in this regard. Explicit inclusion of its consideration of these Decisions could have enabled the applicant to fully understand the weight attributed to them in the planning balance. This is a fair expectation. Nonetheless, based on the evidence that is before me, although disappointing, such an omission does not provide sufficient certainty that the Council failed to have regard to all material considerations and acted unreasonably.
7. Whilst the Council did not provide appropriate clarity in respect to how it regarded those other Decisions, there is nothing before me to suggest that a different outcome would have occurred had the Council been explicit. Crucially, in my Decision even though the benefit that would arise from the appeal proposal's contribution to the CSB supply attracts substantial favourable weight, when balanced with the other relevant considerations, this appeal has failed.
8. In terms of the quality of information shared, the Council has advised that it has always monitored and reported CSB plots in line with the guidance in place at the time. Moreover, it has cleansed and updated the CSB register and associated supply data so that the most up to date accurate position is available. These are reasonable explanations which are not undermined by the applicant's submitted evidence.
9. The Council maintains that the existence of a Community Infrastructure Levy and a new CSB register was communicated to the applicant prior to making its decision. The submitted evidence does not lead me to doubt this. Furthermore, the alleged discrepancy in the Council's communication of the overall CSB position is disappointing, but it is not sufficiently substantiated in the evidence for me to conclude that the Council acted unreasonably.
10. It is clear that the Council is aware of duplicate entries which existed on the CSB register and the submitted evidence does not demonstrate that the applicant had been unaware of this, particularly in light of the earlier Decision cited relating to a site in Pannal. Furthermore, it is appreciated that the Council must respect data protection constraints when handling the register. However, the Council needs to work on improving the presentation of its evidence to robustly justify its position. Nonetheless, the Council has maintained its overall

position with the applicant on CSB matters throughout the appeal process. Whilst it is clear that the applicant disagrees with that position and the approach which led to it, the evidence before me does not demonstrate that the Council purposely failed to provide the relevant available data and methodology. Overall, the evidence before me does not indicate that the Council acted unreasonably in terms of the allegations surrounding the quality and sharing of information.

11. The submitted evidence does not lead me to find that the Council's explanation of its approach to reviewing the CSB register, and the eligibility criteria is a purposeful attempt to artificially suppress demand for CSB plots. The National Custom and Self Build Association's written criticism of how the Council have handled its CSB statutory duties in the context of this appeal proposal does not alter this.
12. In terms of the allegations concerning consistency in approach, the Council has set out the nationally prescribed parameters for using conditions and planning obligations. They have also clarified their position for instances where an application is determined under Policy HS3, or weight is given to the delivery of CSB in a location where market dwellings would not be supported. Therefore, a contradiction in the Council's approach is not apparent.
13. In terms of the allegations relating to timeliness, I am satisfied that the time taken by the Council was driven by its adopted standard deadlines or availability of data for the most up to date Base Period. From the submitted evidence, it is not clear whether the applicant ever received the SPUR form requested. Nonetheless, the web link contained in the applicant's evidence demonstrates that the Council actively encourages the use of standard forms for planning obligation documents and that these should be completed and form part of a planning application submission. The reasons why this did not occur at that earlier stage are unclear. However, the Council's website does provide information which indicates to me that there was reasonable opportunity for the applicant to address these matters at an earlier stage and avoid the resulting situation. Consequently, although the time taken has not met the applicant's expectations, in this case this does not amount to unreasonable behaviour.
14. I have concurred with the Council that a section 106 legal agreement would be the necessary mechanism to secure the affordable housing requirement. It is not unreasonable for the Council to set legal fees for their costs associated with the work that this entails. The web link provided by the applicant leads to a standard Heads of Terms form which advises applicants to contact the Council's legal team for details of costs associated with this. The amount charged and whether or not fees are waived is the Council's prerogative.
15. The timeline provided confirms that collaboration between the main parties on the planning obligations took place in the intervening period between the issue of the decision notice and a date in advance of the appeals programme deadline. These dates are not disputed. The Council's explanation of this matter is evidenced and is not unreasonable. The submitted evidence confirms that the Council met the absolute deadline specified by the applicant, albeit the disputed matters remained unresolved. Furthermore, whilst recognising the time constraints for the applicant arising from the appeal programme, it does not constitute an unduly protracted period on the Council's part.

16. Ultimately, the applicant chose to execute the UU in the absence of the Council's response in advance of the appeal deadline, although there was still time in the appeal programme before the submission deadline. The decision not executed and submit the necessary section 106 legal agreement was the applicant's, rather than any unreasonable behaviour on the Council's part.

Conclusion

17. For the reasons given above, although the applicant's frustrations are acknowledged, I do not find that unreasonable behaviour from Harrogate Borough Council on procedural or substantive grounds, as described in the Planning Practice Guidance is evident. Consequently, neither has any unnecessary expense in terms of defending this appeal occurred.
18. As the relevant tests set out in the PPG in respect to the determination of costs applications have not been met, I conclude that an award for costs is not justified.

C Dillon

INSPECTOR