



Costs Decision

Site visit made on 18 May 2022

by Chris Couper BA (Hons) DiP TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th June 2022

Costs application in relation to Appeal Ref: APP/K0235/W/21/3286731 13A High Street, Clapham, Bedford MK41 6EQ

- 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 Singh for a full award of costs against Bedford Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for a multi-flatted development with extensions and alterations to the existing building and access.
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Decision

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

Reasons

2. The Planning Practice Guidance ('PPG') advises that, irrespective of the outcome of an appeal, costs may be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Examples of types of behaviour that may give rise to a procedural award of costs against a local planning authority are provided at ID: 16-047-20140306. These include a failure to adhere to deadlines.
3. At ID-049-20140306 the PPG also provides a non-exhaustive list of types of behaviour which may give rise to a substantive award of costs against a local planning authority. These include the failure to produce evidence to substantiate each reason for refusal, and giving vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. Starting with procedural matters, the planning application was validated by the Council on 11 May 2021 and given a determination date of 6 July 2021 in accordance with the statutory time period. However, no decision had been made by the time the applicant submitted his appeal on 11 November 2021. He maintains that this amounts to unreasonable behaviour.
5. I note that the applicant agreed to three time extensions, which extended the target determination date to 25 October, but did not agree to the final time extension request made on 20 October which would have extended the period to 5 November.

6. However, it is clear from the evidence before me, that the agreed time extensions were, at least in part, to enable the applicant to submit revised plans and additional information. Indeed, in his email dated 11 July 2021 the applicant set out that he would be submitting revised plans to address the comments of the planning officer and consultees.
7. In his email dated 10 August 2021 the Officer pointed out that the submitted Flood Risk Assessment ('FRA') related to a different development. Whilst the Council might have spotted this earlier, it is also incumbent upon the applicant to provide accurate and relevant information. The agreed time extension up to 25 October was therefore to enable a further FRA to be prepared, and to ensure that the scheme could be reported to the October Planning Committee meeting. That email also pointed out the need for a sequential test, which the submitted FRA did not appropriately address, and also stated that the submission of this alone would not overcome the officer's concerns.
8. Having regard to its email dated 15 November 2021, the Environment Agency ('EA') states that it was first consulted on this scheme on 20 October 2021. The Council's screenshot provided at Appendix 1 of its Costs Rebuttal indicates that the EA was consulted on two occasions before that. The evidence on this matter is therefore somewhat contradictory and inconclusive.
9. In any event, the originally submitted FRA was largely irrelevant as it did not relate to this proposal, and I understand that the final request for a time extension, made on 20 October, was because a response had not been received from the EA by that point.
10. Turning to substantive matters, the applicant maintains that the Council's putative reasons for refusal are unsupported by adequate evidence, and are inconsistent with its pre-application advice.
11. With regards to the four pre-application advice letters at Appendices A to D of the appellant's grounds of appeal, these made clear that the advice given was without prejudice to any decision that the Borough Council may make on any subsequent planning application.
12. The last pre-application advice letter from officers dated 2 February 2021 made clear that it was supplementary to previous advice. I note that those previous advice letters referred to development plan policies (along with emerging policies), with comments made regarding, amongst other things, the need to protect amenity and to ensure appropriate living conditions for existing and future occupiers; and the need for an appropriate Flood Risk Assessment.
13. I have not been provided with drawings to show precisely what was being proposed in those pre-application enquiries. Consequently, although it is clear that the scheme evolved over time, I cannot be certain whether the scheme the subject of this appeal reflected all the comments that had been made. On the basis of the evidence before me, I cannot therefore conclude that the Planning Officer had full sight of this proposal 18 months before the planning application was submitted, as alleged.
14. In my appeal decision I have agreed with at least some elements of the Council's putative reasons for refusal concerning the scheme's visual impact on the character and appearance of the area, the poor living conditions for the

flats' future occupants, and the failure to undertake an appropriate sequential test.

15. Whilst some of these are subjective matters, the Council's officer report and its putative reasons for refusal appropriately explained the harm that it considered would be caused, having regard to the layout of the scheme and relevant policies in the development plan and the National Planning Policy Framework. Even where I did not agree with the Council, for instance regarding the quality of the proposed shared amenity space, the Council presented a coherent argument.
16. In my appeal decision I was unable, on the basis of the evidence before me, to conclude that the requested financial contribution towards sports and play infrastructure was necessary. Nevertheless, given that this matter was addressed only very briefly and inconsistently in the appellant's evidence, I cannot conclude that he was put to unnecessary expense.
17. It is not entirely clear which of the putative reasons for refusal the applicant considers could have been addressed by means of a condition. However, I have explained in my appeal decision why neither the concerns regarding the future occupants' living conditions, nor the failure to undertake a sequential test, could be addressed in that way.
18. Finally, I have no evidence that the Council's putative reasons for refusal were based on a desire to seek 'revenge' on the appellant's decision to lodge the appeal. Indeed, according to the Council the planning decision was about to be issued on the day that the appeal was lodged.
19. For all these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that an award of costs is not justified.

Chris Couper

INSPECTOR