



Costs Decisions

Site visit made on 13 June 2022

by **M Chalk BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5th July 2022

Costs application A in relation to Appeal Ref: APP/X0415/W/21/3286815 75 Lye Green Road, Chesham, Buckinghamshire, HP5 3NB

- 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 Visao Ltd for a full award of costs against Chiltern District Council.
 - The appeal was against the refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Costs application B in relation to Appeal Ref: APP/X0415/W/22/3293593 75 Lye Green Road, Chesham, Buckinghamshire, HP5 3NB

- 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 Visao Ltd for a full award of costs against Chiltern District Council.
 - The appeal was against the refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Costs application C in relation to Appeal Ref: APP/X0415/W/21/3286815 75 Lye Green Road, Chesham, Buckinghamshire, HP5 3NB

- 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 Chiltern District Council for a full award of costs against Visao Ltd.
 - The appeal was against the refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Costs application D in relation to Appeal Ref: APP/X0415/W/22/3293593 75 Lye Green Road, Chesham, Buckinghamshire, HP5 3NB

- 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 Chiltern District Council for a full award of costs against Visao Ltd.
 - The appeal was against the refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Decisions

1. Application A for an award of costs by Visao Ltd is refused.

2. Application B for an award of costs by Visao Ltd is allowed in the terms set out below.
3. Applications C and D for awards of costs by the Council are refused.

Procedural Matter

4. For the sake of consistency with the appeal decision I shall refer to the first appeal submitted as Appeal A, and the second appeal submitted as Appeal B.
5. The initial application for costs by Visao Ltd only identified the application the subject of Appeal B. However, it relates to both appeals and I have determined it accordingly.
6. Similarly, the initial application for costs by the Council only identify Appeal B, but the submissions refer to both appeals. I have likewise determined them as separate applications relating to both appeals.

Reasons

7. The national Planning Practice Guidance on planning appeals and the award of costs (the PPG) advises that costs may be awarded where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process.
8. Unreasonable behaviour on the part of the Council may include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, the failure to produce evidence to substantiate each reason for refusal on appeal or making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
9. The PPG further advises that the aims of the costs regime include discouraging unnecessary appeals by encouraging all parties to consider a revised planning application which meets reasonable local objections.
10. As both main parties have made applications for costs against one another, I shall deal with each party's claims in turn.

Applications A and B by Visao Ltd

11. Visao Ltd claim that the Council failed to justify their reason for refusal by failing to produce evidence to substantiate it and by making vague, generalised or inaccurate assertions about the proposal's impact. They note that all elements of the proposed development have been approved separately by the Council and that the applications sought to formalise these under one permission. As parking for the houses on Plots B and C is in front of those houses, no additional traffic would use the access road as a result of the development. The Council should have sought a Noise and Vibration Impact Assessment to determine whether any identified issues of disturbance could be overcome by use of planning conditions. The frequency of traffic using the access road would average one vehicle every 72 minutes resulting in no detrimental harm to the living conditions of occupiers B and C. The previous permission for an access road and house on Plot B identified improvements to amenity levels resulting from the development. The Council's Environmental Health consultee agreed with the conclusions of the noise report. A similar development at 76 Lye Green Road opposite the appeal site with an access

road passing between two houses was allowed without issues and this is considered inconsistent.

12. The Council responds that the Environmental Health consultee did raise objections to the proposal due to the proximity of the access road to the front doors of the houses on Plots B and C. They consider that the facing walls of the houses would be likely to cause reverberation and amplification of noise and disturbance to occupiers. That vehicle movements would be infrequent is not sufficient to say that no disturbance would result. Infrequent noise can cause harm to living conditions depending on peak volume and duration, and this was not addressed in the noise report. This matter could not be addressed by condition as there is no way of controlling the number of cars owned by the occupiers of the houses reached by the access road, or the number of movements. While the individual elements of the development had been approved, there was never a time when all elements were proposed together, and the individual approvals cannot be lawfully implemented together. The Council did not request a noise report in relation to the first application, but the onus is on the applicant to provide necessary information. It was also not expected that a noise report would show that the relationship would be acceptable. The development at 76 Lye Green Road is not directly comparable to the appeal proposal as the houses either side of that access road are larger, occupy wider plots, do not have main doors or windows facing the accessway and the gap between them is larger than in this proposal.
13. The appellant notes that the Council has not produced expert acoustic evidence to support their case. Any disturbance resulting from the development would be so infrequent that no unacceptable harm would occur. Even allowing for reverberation between the facing walls of the houses on Plots B and C noise levels would still not cause harm to occupiers, and the noise report accounts for peak noise levels in its conclusion. There is no evidence to support the Council's position that living conditions in the houses would be unacceptably harmed given that permission for the access and a house on Plot B was granted without any identified concerns regarding noise. The appellant did not anticipate a noise report being required for the first application as the volume of traffic associated with two houses is low.
14. The appeal proposal is the culmination of a series of applications seeking various developments on the wider site. None of the prior applications sought this precise layout, including two houses opposite one another with the access road between. Given the minimal separation distance and the potential for harm to the living conditions of occupiers I do not consider that the Council acted unreasonably in initially refusing planning permission.
15. However, the noise report is clear that there would be little effect on average or peak noise levels because of the proposed development. While the Environmental Health consultee raised some concerns, the Council has not submitted any further evidence to suggest that the noise report is incomplete in its assessment or incorrect in its conclusions. Considering the limited numbers of vehicle movements and other noise associated with the use of the access by two houses, I do not consider that unacceptable disturbance would result to occupiers of Plots B and C.
16. I therefore find, in relation to the second application only, that the Council has failed to produce evidence to substantiate the reason for refusal. It therefore acted unreasonably in refusing planning permission.

Applications C and D by the Council

17. The Council's grounds for seeking costs against Visao Ltd relate to the duplication of work from progressing two identical appeals. The Council contends that the submission of the second appeal was completely unnecessary and has resulted in a waste of time. The appellant acted unreasonably in submitting the second appeal.
18. Visao Ltd respond that the Council did not raise the matter of noise until it refused the first application. The second application therefore differed materially from the first as it included a noise report. The appellant wished to demonstrate the unreasonable behaviour of the Council in not raising the matter of noise before refusing the first application, and in subsequently refusing the second application in spite of their Environmental Health consultee advising that they agreed with the findings of the noise report. The Council invited a second application for the proposed development as they did not consider that the appeal process was the appropriate stage to submit new information such as the noise report.
19. The Council responds that it was unnecessary to submit two appeals for identical developments and containing identical information. The Council's Environmental Health consultee did not object to the methods used in compiling the noise report but did raise concerns about the proximity of the access road to the front doors of the houses on Plots B and C, and to the potential for disturbance from single events.
20. While the appeals are functionally identical, they do relate to applications determined at different times and based on different information. The appellant could not be certain that the noise report would be accepted for Appeal A. In submitting Appeal B, the appellant ensured that the noise report would be considered, together with the Council's response to it, and therefore they did not act unreasonably in making the second appeal. As Appeal A had been confirmed as valid the appellant also did not act unreasonably in leaving it to run alongside Appeal B.
21. While the Council has had to respond to two identical appeals, I do not consider that the actions of Visao Ltd have led them to incur unnecessary or wasted expense in the appeal process.

Costs Order

22. 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 Chiltern District Council shall pay to Visao Ltd the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
23. Visao Ltd is now invited to submit to Chiltern 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.

M Chalk

INSPECTOR