



Costs Decision

Hearing Held on 25 May 2022

Site visit made on 25 May 2022

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 25th July 2022

Costs application in relation to Appeal Ref: APP/R0660/W/21/3288270 Lakemore Fisheries, Clay Lane, Haslington, Cheshire, CW1 5SQ

- 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 M Ashmore for a partial award of costs against Cheshire East Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for erection of essential rural worker's dwelling and associated office/ garage building.
-

Decision

1. The application for a partial award of costs is granted.

Procedural Matters

2. The hearing was originally scheduled for 6 April 2022 but it was postponed due to unforeseen circumstances unrelated to the case. The parties agreed to a re-scheduled date of 27 April 2022 and the hearing was opened on that day. However, the notification letters had only been sent the day before and a member of the public responded that he was unable to make arrangements to attend the event at such short notice.
3. The views of the main parties in the appeal were sought in relation to the implications of the hearing proceeding in the absence of the third party. While both parties considered that it should proceed, I could not be certain that the interests of third parties would not be prejudiced and I adjourned the hearing.
4. Prior to the adjournment, the applicant indicated that he intended to apply for an award of costs. At the re-opened hearing, he submitted an application in writing. The Council responded in writing at the hearing, and the appellant's agent reviewed the Council's rebuttal and made further verbal comments.

The submissions for Mr M Ashmore

5. The applicant alleges the Council behaved unreasonably by failing to notify third parties of the date and venue of the hearing in a timely manner, thereby resulting in unnecessary costs associated with preparing for and attending the adjourned hearing.

The response by Cheshire East Council

6. The Council acknowledges that the notification letters advising members of the public of the re-scheduled hearing were late. However, it points out that it was

the Inspector's decision to adjourn the hearing. Both the appellant and the Council were satisfied that third parties had already had the opportunity to make written representations such that the hearing could proceed with only the main parties in the appeal present.

7. Furthermore, the Council attribute the reason for the late notification to the Planning Inspectorate. In this regard, the Inspectorate sent an email to the Council's planning appeals team advising that the hearing scheduled for 6 April 2022 had been cancelled and requesting confirmation of the new date of 27 April 2022. However, following confirmation of that date by the Council officer, the Inspectorate did not send a further letter to the planning appeals team formally advising of the new hearing date. Consequently, the date was not logged by the planning appeals team and the timetable for notification letters was subsequently missed. The Council considers that if a letter had been sent to the central planning appeals team mailbox, then any requirements therein including in relation to notifications would have been actioned.
8. The Inspectorate then emailed the Council officer on 22 April 2022, and it left a voicemail message on 25 April 2022, querying whether or not the notification letters had been sent out in advance of the re-scheduled hearing. However, the Council officer was on leave on those days and only picked up the messages the day before the hearing. The Council considers that if the Inspectorate had contacted the planning appeals team, the notification letters could have been sent out sooner thereby negating the need for the hearing to be adjourned.

Reasons

9. The Planning Practice Guidance (the 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 or wasted expense in the appeal process. The PPG sets out examples of the types of behaviour that may result in a procedural award of costs against the Council. These include failing to notify the public of an inquiry or hearing, where this leads to the need for an adjournment.
10. The Procedural Guide: Planning appeals – England (dated 12 April 2022) sets out the timetable for the hearing procedure, including that the Planning Inspectorate will confirm the date of the hearing and that at least 2 weeks before the date of the hearing, the Council will tell interested people about the hearing arrangements.
11. Notwithstanding the Council's concerns in relation to the email address used for correspondence, both the Council's planning appeals team and the officer were aware of the correspondence postponing the hearing and seeking confirmation of the new date. The Council confirmed the date and it arranged a venue. It informed the Inspectorate of the arrangements on 12 April 2022. The Council officer attended the event at the arranged date and time.
12. I accept that if the Inspectorate had contacted the planning appeals team directly to query the notifications, then the notifications could have been sent out sooner. However, while the Inspectorate sought clarification on this matter in advance of the hearing, the notifications are the responsibility of the Council and not the Inspectorate.

13. People who are interested in the outcome of an appeal have an important role to play in the planning process and their representations are taken into account. In this case, the interested party who was unable to attend the event at short notice expressly stated that he would have liked the opportunity to attend and to pass comment. I acknowledge that the main parties considered that there was no need to for an adjournment, but this was ultimately a decision for the Inspector taking account of the views of all parties. In this regard, I concluded there was a significant risk that the interests of third parties would have been prejudiced because they were given insufficient notice of the hearing.
14. Therefore, the late notification of the hearing resulting in its adjournment does constitute unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG. For this reason, a partial award of costs is justified.

Costs Order

15. In the 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 Cheshire East Council shall pay to Mr M Ashmore, partial costs incurred in relation to the adjourned hearing of the appeal proceedings described in the heading of this decision.
16. The applicant is now invited to submit to Cheshire East 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.

Sarah Manchester

INSPECTOR