
Costs Decision

Inquiry Held on 29 to 31 March and 1, 5 and 11 April 2022

Site visits made on 15 February, 28 March, 1, 4 and 6 April 2022

by Grahame Gould BA MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st November 2022

Costs application in relation to Appeal Ref: APP/R0335/W/21/3287383 Land west of Wokingham Road, Sandhurst

- 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 Bracknell Forest Borough Council for a partial award of costs against Bloor Homes Limited.
 - The appeal was against a failure to give notice within the prescribed period of a decision on an application for outline planning permission for the erection of up to 150 dwellings, creation of new access off Wokingham Road, Sandhurst, and provision of public open space, landscaping, suitable alternative natural greenspace (SANG) and related infrastructure and new 20 space car park (all matters reserved except for details of vehicular access from Wokingham Road and to the car park from Lower Church Road).
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance's section on appeals (the PPG) advises that 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.
3. An award of costs is sought by the applicant (the Council) from Bloor Homes Limited (the appellant). That application has been made on a procedural basis and seeks the recovery of costs limited to those costs incurred by the applicant in the preparation of and the giving of its evidence in response to the appellant's access proposals for pedestrians and cyclists. The application for costs and the appellant's response to it were made in writing prior to the end of the inquiry. Given that only summaries of the application and the response to it are set out below.

The submissions of the applicant

4. In essence the applicant's position is that it was unreasonable for the appellant, as part of its appeal, to have: sought full approval to details for access for pedestrians and cyclists; then submitted revised drawings at various stages throughout the life of the appeal concerning those access arrangements; and towards the end of the inquiry amended the description of development, with the effect of reserving the details for pedestrian and cyclist access for future consideration. It is further contended that through its actions

the appellant sought to evolve its proposals relating to on and off site works, through submitting revised access drawings described as being “for information” or “illustrative” as part of the appeal, when the matter of access was for determination.

5. A non-determination appeal was made when it was evident that the matter of access was “... *incapable of being approved*”. That should have been obvious to the appellant but resulted in the submission of evidence and the taking up of a considerable amount of inquiry time prior to the appellant revising the development’s description.
6. The appellant’s conduct was unreasonable putting the applicant to wasted time and expenditure and “*Had the appellant sought to amend the description of development at the outset of the appeal process, the conduct of the appeal would have been very different ...*”.

The appellant’s response

7. Prior to the appeal’s submission the highway authority was “... *obstructive and unhelpful with a near obsessive desire to drill down into ever greater detail ...*” with its concerns being capable of being addressed through the imposition of conditions. The applicant contends that the appellant’s actions during the appeal were unreasonable, because in the preceding 18 months the appellant did not accede to the highway authority’s every requirement.
8. The appealed application on the basis of the submitted documentation was validated for determination by the Council. As part of the consideration of a planning application it is normal for there to be dialogue and exchanges of information about aspects of highway design. At the planning application stage there was no need for accesses to be designed in full engineering detail. Following the first planning application’s refusal the appellant sought to engage with the applicant prior to the appealed application’s submission but was “... *effectively stonewalled*”.
9. At meetings held following the appealed application’s submission the highway authority exhibited a closed mind and reluctantly the appellant decided to make its appeal and thereafter was faced with further requests for details of the accesses. There were opportunities for the applicant’s concerns to be resolved prior to the inquiry which were not taken up.
10. Ultimately the appellant “... *took the tactical decision that it would be far better for the Inspector to engage with the principal matters for which detailed consent is needed to be able to get on with the site and that other aspects of access which were being required could be shelved for another day*”. That was a rational rather than unreasonable response.

Reasons

11. The appealed application as originally submitted clearly sought approval for the matter of access, leaving details relating to appearance, landscaping, layout and scale for later determination. Accordingly, access in all its guises, was for determination by the applicant. However, that did not appear to have been fully grasped by the appellant either prior to or following the appeal’s submission.

12. I consider there was a failure on the appellant's behalf to make an adequate distinction between the on-site works (ie works within the application site/red line area) needed to form the proposed accesses for pedestrians and cyclists, for which planning permission was being sought, and what would be the attendant works within the public highway (to be facilitated via an agreement under Section 278 of the Highways Act 1980). I consider that contributed to the highway authority's extensive pursuit for detail/clarity. The appellant's approach to access, prior to amending the description of development, being more akin to what I would have expected when The Town and Country Planning (General Development Procedure) Order 1995 was extant. That Order having been replaced in 2010, with the currently extant version being The Town and Country Planning (Development Management Procedure) (England) Order 2015.
13. With access being for approval there was a need for more than rudimentary details to be available for the proposed controlled and uncontrolled A321 accesses lying within the application site, if the accesses for pedestrians and cyclists were to be capable of being approved as part of an outline planning application. The appealed planning application was accompanied by drawings, which while not being full engineering design drawings, showed the general arrangements for the accesses. Those drawings were capable of forming part of a planning permission, if the general arrangements for the accesses shown on them had proved to be acceptable to the planning authority, informed by the advice it was receiving from the highway authority. However, the highway authority clearly had reservations about the nature of the accesses shown on the application drawings.
14. The highway authority's concerns were communicated to the appellant and a meeting was held between the parties on 1 November 2021. Thereafter the appeal was submitted on 19 November and on 14 December the appellant sent the applicant a technical note (TN). The TN was accompanied by some revised drawings. I recognise that the submission of the TN and the accompanying drawings were intended to narrow the differences between the applicant and the appellant. However, as access was a matter for approval, I consider the submission of the revised plans was tantamount to the starting of the appeal's use as a means of evolving the scheme, given that new plans were tabled shortly after the appeal's submission. Evolving a scheme at appeal is a practice that the Planning Inspectorate's planning appeals procedural guide (Annexe M)¹ warns against.
15. The submission of the plans on 14 December caused some friction between the appellant and the applicant. Thereafter there continued to be acrimony and in an email circulated on my behalf to the parties on 27 January 2022 I referred to the appellant's approach to seeking to amend its proposals for off-site highway works as being "*opaque*". At the pre-inquiry Case Management Conference I further found it necessary to highlight a concern I had about there being "*... far too much petty bickering*" between the appellant and the applicant. The handling of access in no small measure contributing to that. Notwithstanding that further revised indicative drawings formed part of the appellant's inquiry evidence.

¹ As of April 2022

16. The applicant's pursuit of details relating to the accesses clearly preceded the submission of the appeal. Given that I consider there were ample opportunities for the appellant to have reconsidered its approach to the matter of access. Those opportunities being when the appeal was first submitted or very shortly thereafter or failing either of those eventualities at either the exchange of proofs of evidence or immediately prior to the inquiry's opening. Had the description of development been revised prior to the inquiry's fifth sitting day I consider it likely less written and oral evidence concerning access would needed to have been aired by both the appellant and the applicant. The change of description arose after I found it necessary to initiate a discussion about conditions towards the end of the inquiry's fourth day. I considered that discussion was necessary following the hearing of the evidence concerning highways and transportation so that I could explore with the parties what conditions relating to access might reasonably be imposed in the event of the appeal being allowed.
17. The appellant contends that the applicant's pursuit of details was excessive because outline planning permission was being sought. That is a view I do not share, given that all aspects of on-site access were clearly for determination when both the planning application and the appeal were originally submitted. As I have indicated above, there were several opportunities when the appellant could potentially have revisited its approach to the matter of access. Had one of those opportunities been pursued then I consider in relation to access for pedestrians and cyclists in Wokingham Road and High Street the applicant would not have found it necessary to present so much of its own evidence and would have expended less time assessing the appellant's evidence, including the cross examination that took place at the inquiry.
18. Accordingly, I am of the view that with respect to the handling of the provision of access for pedestrians and cyclists in Wokingham Road and High Street there was unreasonable behaviour on the appellant's part. That resulted in the applicant incurring unnecessary and wasted expense in the period between the appeal's submission and the beginning of the inquiry's fifth sitting day, when the appellant confirmed that it wished access for pedestrians and cyclists to be treated as a matter reserved for future consideration.
19. It will be evident from the appeal decision that I have concluded that safe access could be provided for those crossing between the proposed on-site suitable alternative natural greenspace (SANG) and the existing Horseshoe Lake SANG. Given that conclusion, I consider that the appellant's approach to the provision of access between the existing and proposed SANGs was reasonable during the appeal.

Conclusion

20. Having regard to the provisions of the PPG, most particularly paragraphs 028, 030 and 052, I conclude that it was unreasonable for the appellant to have decided to make the consideration of access for pedestrians and cyclists, insofar as that concerned the proposed accesses in Wokingham Road and High Street, a reserved matter at such a late stage in the appeal's life. That caused the applicant to incur unnecessary and wasted expense.

Costs Order

21. 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 Bloor Homes Limited shall pay Bracknell Forest Borough Council, the costs of the appeal proceedings limited to the consideration of safe and adequate access for pedestrians and cyclists in Wokingham Road and High Street (as a part of the Inspector's third main appeal issue) and insofar as that concerned a) the giving of the written and oral evidence by Mr Wells, b) the review by Mr Wells and the lawyers instructed by the Council of the appellant's written appeal submissions, including Mr Millington's proof of evidence and his rebuttal of the proof of evidence of Mr Wells and c) the preparation for and the cross examination of Mr Millington by Ms Murphy KC at the inquiry; such costs to be assessed in the Senior Courts Costs Office if not agreed.
22. The applicant is now invited to submit to Bloor Homes Limited, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Grahame Gould
INSPECTOR