The Planning Inspectorate

Costs Decision

Inquiry held on 11, 13 and 14 October and 10-11 November 2022
Site visit made on 12 October 2022

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 02 December 2022

Costs application in relation to Appeal Ref: APP/P1425/W/22/3300691
Land at Nolands Farm, Plumpton Green

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Fairfax Acquisitions Ltd for a partial award of costs against Lewes District Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for demolition of 2 No. existing dwellings, erection of up to 86 No. residential dwellings including 40% affordable housing, provision of pedestrian and vehicular access, open space, associated infrastructure and landscaping.

Decision

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

The submissions and responses by the parties

2. The costs application was made in writing on the final sitting day of the Inquiry. It was not possible to receive the Council's response on this day. Therefore, it was agreed that the Council's response and any final comments from the applicant could be provided in writing within a specified timeframe. The Council's response was received on 16 November 2022 and the applicant confirmed they did not wish to provide any final comments.

Reasons

3. The Planning Practice Guidance (PPG) advises that irrespective of the outcome of the 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. The PPG states that awards against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.

4. The applicant contends that the Council has behaved unreasonably on procedural grounds by submitting an additional document on the penultimate sitting day of the Inquiry known as Inquiry Document 24 (ID24) relating to affordable housing supply. The applicant argues that the document could have been submitted earlier in the Inquiry process, for example as part of rebuttal evidence that was due by 27 September 2022. The applicant claims that the behaviour incurred wasted expense in needing to review ID24 and produce a response to that document, which became Inquiry Document 29 (ID29).

5. The Council accepts that ID24 was late but argues that its purpose was to provide an accurate position on affordable housing delivery within the five year supply. ID24 concludes that the total proportion of affordable units in the five year supply was over 31% and not 15-17% as set out in the proof of evidence of the applicant's planning witness.

6. It is unfortunate that the evidence in ID24 was not submitted earlier in the process and before the Inquiry opened, particularly as it was responding directly to material in the applicant's planning proof of evidence that could have been addressed through a rebuttal proof or an addendum to the statement of common ground. By the Council's own admission, the submission of ID24 made no difference to its position on the significant weight to be afforded to affordable housing provision. Therefore, it was unreasonable for the Council to submit the evidence in the manner that it did.

7. While the applicant did not have to respond to ID24, it is understandable that they wanted to do so. The difference between the parties on the percentage of affordable housing was not insignificant and so it was not unsurprising that the applicant wanted to review the figures. Ultimately, the point of the whole exercise went nowhere and made no material difference to the outcome of the appeal. Therefore, the applicant incurred unnecessary and wasted expense in responding to the unreasonably late evidence.

8. For the avoidance of doubt, this unnecessary and wasted expense relates only to the review of the figures in ID24 and not to the additional points raised by the applicant in ID29 about the location of affordable housing units across the district. I concur with the Council that these points went beyond the scope of reviewing the figures in ID24.

9. In conclusion, the Council has behaved unreasonably in submitting late evidence that has led to unnecessary and wasted expense in the appeal process. Therefore, a partial award of costs is justified.

Costs Order

10. 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 Lewes District Council shall pay to Fairfax Acquisitions Ltd the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in reviewing the figures set out in Inquiry Document 24; such costs to be assessed in the Senior Courts Costs Office if not agreed.

11. Fairfax Acquisitions Ltd is now invited to submit to Lewes 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.

Tom Gilbert-Wooldridge

INSPECTOR