



Costs Decision

Site visit made on 18 October 2022

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2022

Costs application in relation to Appeal Ref: APP/H1840/W/22/3293474 52 Bretforton Road, Badsey WR11 7XQ

- 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 Wychavon District Council for a partial award of costs against Paul Newman New Homes.
 - The appeal was against the refusal of planning permission for the development of 21 dwellings together with associated accesses, parking and landscaping.
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Decision

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

Reasons

2. Planning Practice Guidance ('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.
3. The local planning authority's ('LPAs') application for costs is based on the alleged unreasonable behaviour of the applicant and wasted expense, for the reasons, as considered below.
4. Following the refusal of the original application, the applicant lodged an appeal in respect of this, but sometime after also submitted a second planning application. Pursuing the appeal and a second planning application are not examples of unreasonable behaviour. Moreover, the second planning application required a separate fee. Therefore, the assistance of LPA officers in determining the second application was funded.
5. Whilst the LPA was party to the preparation of two separate S106 Agreements, these were drafted by the appellant's solicitors who also entered into an undertaking with the Council to pay, in full, the reasonable and proper legal fees.
6. In the circumstances, where the Council had confirmed that it could not demonstrate a 5-year housing land supply and following a recommendation from the Planning Committee that the second application was approved subject to the completion of a S106 Agreement, the LPA asserts that the applicant should have withdrawn the appeal or supported a change of procedure from a Hearing to written representations.

7. However, because no planning permission can legally exist until either there is a local authority decision notice or a Planning Inspectorate decision letter, it was understandable for the applicant to continue with the appeal process. Indeed, the second planning permission was granted on the 24 October 2022 and by then I had acceded to the LPAs request to determine the appeal by way of written representations.
8. The LPA alleges that the applicant was given the option to delay determination of the second planning application subject to the outcome of the appeal, however they declined by stating that should the application be approved, they would withdraw the appeal. Furthermore, that the applicant agreed not to seek an award of costs if the LPA agreed to the statement of common ground and to substituting the plans to those approved at planning committee for the appeal scheme, on the understanding that the Council would not defend the appeal. On the other hand, the applicant disputes this version of events and the LPA has not provided any substantive evidence to support its allegations.
9. As such, it has not been substantiated that the applicant behaved unreasonably by prolonging proceedings and by deliberately misleading the LPA with regard to stating that they would not submit a claim for costs.
10. Even if I were to accept that the applicant behaved unreasonably by continuing with the appeal, when essentially the same had been approved by planning committee. Given that I had agreed to appeal proceeding by way of written representations, the LPAs appeal submissions were limited to the Statement of Common Ground which was jointly prepared with the applicant, and a brief Statement of Case, in view of the fact that the LPA was not contesting reasons 1, 2 and 3 of the reasons for refusal and was of the view that Reason 4 would be overcome by the signing of a S106 Agreement.
11. Accordingly, and given that where there was some duplication of work, the costs for this had already been appropriately funded, it is unlikely that the LPA has gone to an unnecessary expense by the appeal process. Therefore, a procedural partial award of costs has not been clearly substantiated.

Conclusion

12. I therefore find that unreasonable behaviour on the part of the applicant resulting in unnecessary or wasted expense incurred by the appeal, as indicated in the PPG, has not been demonstrated. Accordingly, I conclude that a partial award of costs is not justified.

M Aqbal
INSPECTOR