

Costs Decision

Inquiry held on 29 November 2022

Site visit made on 30 November 2022

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 January 2023

Costs application in relation to Appeal Ref: APP/T2405/W/22/3302956 Land off Cork Lane, Glen Parva

- 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 Glen Parva JV LLP for a full award of costs against Blaby District Council.
 - The inquiry was in connection with an appeal against the refusal of an application which sought approval of details pursuant to condition No 2 of planning permission Ref: 15/0176/OUT, granted on 2 August 2016.
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Decision

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

Procedural Matter

2. The applicant's claim for costs was made in writing on the eve of the Inquiry. The Council's response was made in writing during the Inquiry, as was the applicant's reply. There were no subsequent oral additions to the claim.

Reasons

3. The Planning Practice Guidance (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.
4. The primary case on the claim is said to be substantive unreasonableness in that the Council's objection proved to come to nothing more than a request for a non-material amendment. The alternative case is that of procedural unfairness due to the belated timing of the Council communicating this position.
5. The applicant also considers that the Council's position is unreasonable over the relevance of land contamination to the consideration of the reserved matters pursuant to condition No 2 on the outline planning permission. This is because of condition No 11 on that permission, which itself deals with land contamination and is to be dealt with prior to the development taking place, as opposed to at the reserved matters stage.
6. While on the face of it the applicant's view in this regard has some merit, it is also true that the applicant itself submitted a not insignificant amount of

information on land contamination during the consideration of the application by the Council. It was therefore not unreasonable that the Council then considered this information in coming to its decision on the application.

7. The applicant's evidence to the inquiry itself stated both that it was submitted 'for information only', while also been 'comprehensive and robust' and 'up to date information'. Even though I am sure this was not the intention, it does present somewhat of a confused position of how this information is to be treated, regardless of the reasons why it was submitted in the first place. I cannot therefore find the Council's position in considering the information in its decision to be unreasonable, irrespective of condition No 11.
8. I have also been referred to legal submissions on this matter. In terms of the case before me though, whether unreasonable behaviour has been demonstrated depends on the particular circumstances that I have set out above. This does not amount to unreasonable behaviour.
9. The position is not altered by the applicant acknowledging the risk that even if the layout was approved, it might have to be subsequently amended if it proved incompatible with what might be discharged under condition No 11. It is not a case though where the Council has sought to erroneously 'switch the sequence' of the reserved matters and condition No 11. It is simply that the Council considered the land contamination information that the applicant submitted during the course of the application in its decision.
10. In terms of how the situation ultimately resolved itself between the main parties, this led to the production of a Supplementary Statement of Common Ground (sSoCG). This included a number of agreed measures to deal with land contamination and an amended site layout plan. These were submitted in the lead up to the inquiry. The measures that are set out in the sSoCG are plainly broader than the amended site layout plan.
11. In addition, to say that the Council's expert has been unable to substantiate the Council's objection does not tally with that a proof of evidence was submitted that supported the Council's position. Nor is there an indication that if the measures in the sSoCG and an amended site layout plan had not been agreed, then the Council's expert witness would have still withdrawn from his position.
12. The amended site layout also impacts on a greater number of plots than the applicant indicates, as is borne out by the suggested plans condition in the sSoCG. It affects a number of plans and is a greater intervention than is inferred. As such, this exceeds 'nothing more than a request for a non-material amendment'. In taking these considerations together, the Council is not guilty of substantive unreasonableness.
13. It is also hard to envisage how the Council could have foreseen what was required to resolve the land contamination issue prior to reviewing the written evidence of the applicant after the exchange of proofs. The solution that was put forward by the applicant during the application as regards the virtual gas curtain adjacent to the northern boundary is in any way in a different form from that which was presented through the amended site layout plan. In any event and as I have already explained, this was only one of a number of potential measures that were agreed by the main parties in order to come to an agreed position.

14. By both main parties seeking to come to such a position after the exchange of evidence clearly saved inquiry time. In my view, such an approach is to be welcomed. The Council played its part in this, as well as the applicant. In these circumstances, I do not find that the Council's timing of communicating its position to be 'belated'. It has not caused procedural unfairness.
15. Reference has also been made to a course of action with regard to a non-material amendment after the grant of reserved matters. This is however premeditated on the appeal being allowed, which cannot be assumed. This is also outside the control of the Council. Dealing with a non-material amendment after the grant of reserved matters also depends on matters that lie outside of the appeal process. It does not therefore change my view that the Council has not acted unreasonably.
16. I have also considered whether a partial award should be made, but I reach the same overall conclusion that the Council has not acted unreasonably. As such, I do not have cause to consider whether unnecessary or wasted expense has resulted.
17. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is not, therefore, justified.

Darren Hendley

INSPECTOR