

Costs Decision

Hearing Held on 22 November 2022

Site visit made on 23 November 2022

by M Chalk BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th January 2023

Costs application in relation to Appeal Ref: APP/A1910/W/22/3300850 Dale End, 1 Box Lane, Feldon, Hemel Hempstead, Hertfordshire, HP3 0DH

- 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 Visao Limited for a full award of costs against Dacorum Borough Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a development described as "Demolition of existing dwelling. Construction of 9 apartments with associated outbuildings, parking, landscaping and access."
-

Decision

1. The application for costs is allowed in part, in accordance with the terms set out below.

Preliminary Matters

2. The application for costs in relation to the withdrawn appeal on this site, ref APP/A1910/W/21/3284399, is the subject of a separate decision.

The submissions for Visao Limited

3. The applicants claim that the Council failed to deal with the application the subject of this appeal in a timely manner and refers to 7 emails sent to the Council between February and June of 2022 with their responses as evidence. They state that Council officers were inconsistent with their assessment and failed to take account of evidence submitted by Visao Limited, including in relation to developments on nearby sites. The Council did not act proactively in engaging with the applicants to narrow down the reasons for refusal facilitating minor amendments to the scheme.
4. During the hearing the applicants further submitted that the Council's pursuit of the sustainable transport main issue was unreasonable because it prevented or delayed development which should have clearly been permitted, they failed to produce evidence to substantiate this reason for refusal and made vague, generalised or inaccurate assertions about the proposal's impact, unsupported by any objective analysis. The Council had agreed that the site was in a sustainable location, neither Policy 10 of its Local Plan nor Policy CS8 of the Core Strategy required provision of a footpath access onto and through the neighbouring site and the case officer's line manager had said that such a requirement was unreasonable as the neighbouring site was outside of the applicants' control. The Council should have accepted that the site was acceptable in sustainable transport terms.

The response by Dacorum Borough Council

5. The Council responds that the delay in determining the application arose from ongoing discussions negotiations with the applicants. They detail correspondence between the parties between January and May of 2022 in which various matters were discussed and additional information was sought and provided. The Council acknowledges that it did not meet its agreed written schedule of dates for responding to the applicants following a meeting on 19 May but considers there was reasonable cause to delay a decision given the ongoing negotiations and discussions. The Council considers that these show that the Council was being proactive.
6. With regard to nearby applications, the Council considers that the scheme at 7 Box Lane has poorly conceived design elements that it was seeking to avoid in the appeal proposal, the starting point differed due to the bungalow to the frontage, and that site was not in the setting of a listed building. The scheme at Boxmoor Lodge delivered heritage benefits as it involved the demolition of an uncharacteristic extension that detracted from the character of the listed building, plus would deliver improved landscaping and a wall between the site and the former Swan Inn. That site was already significantly developed, and the scale of development sat more comfortably within the site.
7. With regard to the sustainable transport issue, the Council accepts that the site is in a sustainable location but that does not mean that the development had taken the full opportunity to be sustainable in this regard. The footway through the site to Box Lane would not necessarily prevent occupiers from using their cars as they would have to pass through the car park to get to Box Lane. An alternative footpath through the Boxmoor Lodge site would provide an additional route and make the site more sustainable. Policy 10 of the Local Plan seeks to take opportunities to improve accessibility, while Policy CS8 sets out a sequential approach for sustainable transport. Having regard to these, the development would not go far enough. While the policies do not specifically require the creation of such a link, this is not necessary for it to be considered. The Council did not require a legal agreement between the two site owners, rather evidence that a link can be provided. While the line manager may have felt the pursuit of the link was unreasonable, they were not aware of all the considerations relating to the application.

Reasons

8. National Planning Practice Guidance on appeals and the award of costs advises costs may be awarded where a party has behaved unreasonably, and that behaviour has caused another party to incur unnecessary or wasted expense in the appeal process. The Guidance notes that in any appeal against non-determination the local planning authority may be at risk of an award of costs, if the Inspector concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicants would have enabled the appeal to be avoided altogether. Costs may also be awarded where the Council has not determined similar cases in a consistent manner.
9. The application the subject of this appeal was submitted in December 2021. From the evidence before me, correspondence between the parties began in late January 2022 and continued until around the end of May, with the appeal submitted on 10 June. The application was the second on the site, with an earlier application for a similar scheme refused in June 2021. That application was refused on 5 grounds. Visao Limited sought to overcome these issues in

- the second application, but the Council remained concerned with various issues, including the effect on the significance of listed buildings, the character and appearance of the area, and the parking and access arrangements.
10. It is clear from the extent of correspondence that the Council did attempt to negotiate improvements to the scheme to address issues identified with it. The applicants had to chase responses on several occasions, and it appears that in some instances the information provided was somewhat fragmentary and contradictory in nature, with the applicants' agent highlighting instances of the Council requesting information previously submitted, or where it differed in the way in which officers assessed the appeal proposal in comparison to developments on nearby sites. I have no doubt that this was frustrating, but where the Council did respond they were seeking amendments to try and resolve issues.
 11. While the Council did not determine the application before the appeal was submitted, they have provided reasons for which they would have refused planning permission. It is clear, despite the applicants' efforts and the negotiations between the parties, that there were fundamental differences on certain issues.
 12. The main parties were far apart in their positions on the acceptability of the proposed development. The Council would have refused permission for the application without substantial revisions or waited to determine it until the Chilterns Beechwoods matter could be resolved. Given those differences I do not consider that this appeal could have been avoided, even if the Council had been timelier in their communications. Accordingly, while there is evidence of unreasonable behaviour on the Council's part in the time taken to respond to correspondence on the application, I do not consider that this has caused the applicants to incur unnecessary or wasted expense in the appeal process.
 13. However, in relation to the sustainable transport issue I consider that the Council acted unreasonably in pursuing this once the Boxmoor Lodge site had received permission. No access was secured to the appeal site as part of that permission, although both site owners had indicated an agreement in principle on their application plans. In continuing to pursue this point through a reason for refusal and onto the appeal, the Council has acted unreasonably and caused the applicant to incur additional costs when securing the access and route falls outside of the applicants' control.

Costs Order

14. 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 Dacorum Borough Council shall pay to Visao Limited the costs of the appeal proceeding incurred in responding to the sustainable transport issue.
15. The applicants are now invited to submit to the 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. If the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

M Chalk

INSPECTOR