



Costs Decision

Hearing held on 29 November 2022

Site visit made on 29 November 2022

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 2nd February 2023

Costs application in relation to Appeal Ref: APP/F2415/W/22/3303898 Land at Sutton Lane, Sutton in the Elms, Broughton Astley, Leicestershire LE9 6QF

- 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 Davico Properties Limited for a partial award of costs against Harborough District Council.
 - The appeal was against the refusal of outline planning permission for the erection of up to 9 self-build dwellings.
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Decision

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

Procedural matter

2. The costs application, the Council's response and the appellant's comments were received in writing prior to the hearing. At the hearing, the appellant expanded upon the application to include highway safety and documentation referred to for the first time at the event. The Council was given the opportunity to reply and the appellant was allowed to comment on that response.

Reasons

3. 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 process¹.
4. There are three claims to assess. Firstly, whether the extent of the Council's co-operation with the appellant at application stage was unreasonable. Secondly, whether the Council's delay in providing the Officer Report was unreasonable. Thirdly, whether the Council's reference to documents at the hearing was unreasonable.
5. In relation to the first claim, the Council co-operated with the appellant at application stage by sharing its concerns in relation to ecology, highway safety and landscape matters and by allowing the appellant the opportunity to address these concerns. Given that there is an expectation that local planning authorities will promptly determine planning applications it need not have done so.
6. In this case the application was made on 7 May 2021. The Council had delayed determination of the application by many months in order to give the appellant the

¹ Paragraph: 028 Reference ID: 16-028-20140306, 'Appeals', 'Why do we have an award of costs?'

opportunity to address its concerns regarding ecology and highway safety. By March 2022, the ecology information was still outstanding. Although it appears that the Council in early February 2022 did not agree a timescale for the submission of the ecology report, there reaches a point beyond which it is no longer reasonable to wait. In deciding that this point had been reached in relation to this issue on 10 March 2022 the Council did not therefore act unreasonably.

7. With regard to highway safety, on 18 February 2022 the appellant submitted further information to the Council. It appears that the application was determined before the Highway Authority had commented on the information. If highway safety had been the sole reason for refusal of the application then this would have tilted the argument in favour of this constituting unreasonable behaviour. However, it was not. Moreover, no material expense was incurred at appeal stage in relation to this issue as the Council conceded in the statement of common ground that highway safety concerns had been addressed.
8. There was a fundamental disagreement between the appellant and the Council over the effect of the proposed development on the landscape. Whilst in the appeal decision I did not agree with the Council's assessment, its reasoning formed a respectable basis for its position. Therefore, even if the Council had delayed the decision until after March 2022 to allow the appellant to submit a landscape assessment, this is unlikely to have altered the Council's stance.
9. Turning to the second claim, the application was determined by the Council and a decision notice was issued on 10 March 2022. The appellant states that the officer report on the application was not uploaded to the public access system. In discussions that followed the appellant states that a copy of the officer report on the application was requested on more than one occasion but was not received until 26 July 2022. The Council refutes that earlier requests were made for the report prior to the formal request by email on 25 July 2022. There is a lack of evidence to support the applicants claim that the Council repeatedly failed to send a copy of the officer report. In the absence of adequate evidence I am unable to conclude that the Council acted unreasonably.
10. In relation to the last claim, in support of the Council's position in relation to self-build and custom housebuilding a number of pieces of evidence were introduced at the hearing. Whilst not ideal this often happens at a hearing and this only constitutes unreasonable behaviour resulting in unnecessary expense if a notable adjournment was required to consider the evidence submitted. As no such adjournment was needed, I find this claim also fails.
11. Taking all these matters into account, I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated. An award of costs is therefore not justified.

Ian Radcliffe

Inspector