
Costs Decision

Site visit made on 18 November 2022

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 March 2023

Costs application in relation to Appeal Ref: APP/X0415/C/22/3293635 Land at Rosewood Farm, Watchet Lane, Little Kingshill, Great Missenden , Bucks HP16 0DR

- 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 Buckinghamshire Council for a full award of costs against Mr Thomas Rose.
 - The appeal was against the Council's decision to issue an enforcement notice against the construction of a detached dwelling.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. This costs application is made by the Council in respect of both procedural and substantive grounds, and is an updated version of an earlier claim which applied for a partial award concerning only the procedural aspect.
4. The original claim had largely related to what the Council had identified as the late submission of evidence which, as the case had changed significantly since the 'Grounds of Appeal' were submitted in February 2022 when the appeal was first lodged. As the appointed Inspector I can confirm that, as the Council had not seen the 'Statement of Case' (SOC) dated April 2022 when the Hearing first sat in September 2022, I had little option but to adjourn the proceedings until a later date so that the Council could consider the substance of the appeal.
5. Not only had the Council not received the SOC I had not seen it either, and this would have been a clear justification for a costs award. However, in examining the representations made by Mr Rose's agent there are other factors to take into account.
6. Firstly, evidence has been provided in the form of an e-mail dated 14 April 2022, to show that the agent sent the SOC as an attachment to PINS. There is no indication that this was copied to the Council but, as the appeal process was already in effect, the document would have been copied to the Council, regardless, had it been received. The fact that this never happened would suggest that, inexplicably, PINS did not receive the SOC and the Council, like

myself, when the Hearing first sat, was relying on the initial grounds along with a Landscape Assessment and an Ecological Assessment, both produced by specialist consultants. A draft Unilateral Undertaking (UU) was also received by PINS in August 2022.

7. Secondly, PINS' 'Start letter' was sent out on 3 March 2022 indicating that the appeal would proceed by way of the Written Representations procedure and, in accordance with the timetable set out in the letter, the Council duly submitted its own Statement on 18 March 2022. However, on 5 April the agent wrote to PINS requesting that the method be changed to that of a local inquiry. PINS then wrote to the main parties on 1 June explaining that the method had instead been changed to a Hearing, with the letter also asking "*Can you confirm if you are content with the documentation already received?*"
8. It appears that neither party responded and on 28 June a letter was sent to the parties explaining that the Hearing date had been fixed for 6 September.
9. Following the adjournment, but before the Hearing reconvened in November, the agent sent in the appeal documents, as he claimed had been submitted in April, which had been accompanied with 5 Appendices. However, here the Council has a point as an additional 7 Appendices were then added before the Hearing re-sat.
10. The obligation in the UU, the original version of which offered that Building C be demolished and the residential use of Building B would cease was subsequently changed in its final version to show the intention that Building B would also be demolished. As such, the appellant's case continued to evolve and, although I had stipulated new deadline dates for the parties to respond and finalise their respective cases, the agent did request an extension of time to which PINS agreed, but the Council felt that it had little time to respond.
11. In referring, though, to the substance of the appellant's case I consider that this did not change significantly in the time that elapsed between the Hearing dates, although documents such as Statutory Declarations were produced. On balance, I consider that the Council did have sufficient time to update its case, accordingly. I do, though, sympathise with the Council to this end as, on reflection, whilst it had stuck to the original timetable - that originally set out for the Written Representations procedure - this had been overtaken and affected by the series of events I have outlined.
12. Turning to the Council's claim on substantive grounds this states that "*the enforcement notice was served for one reason, relating to the development being inappropriate development.*" In fact, the notice's section 'Reasons for Issuing this Notice', not only makes reference to the Green Belt but also refers to the Chilterns Area of Outstanding Natural Beauty, landscape character and an intensification of use. Accordingly, the appellant was quite entitled to commission the Landscape and Ecological Assessments and, as the Council had received these said documents in April 2022, I am satisfied that, certainly by the time the Hearing reconvened, its case had not been prejudiced as a result.
13. Further, the final Statement of Common Ground shows agreement on several relevant matters whilst the issues in points 11-15 of the Council's costs claim were satisfactorily covered and confirmed at the Hearing. Moreover, despite the appeal outcome, I found in favour of the Council regarding the issue of inappropriate development and the effect on the openness of the Green Belt.

14. I consider that some of the written comments made in response to the costs claim were disparaging and unnecessary, and this added nothing to the defence against the application made. That said, in deciding this application for an award of costs, I must decide only whether unnecessary expense has arisen directly from any unreasonable behaviour.
15. Although I consider that the appellant might have benefitted to a certain degree from how the events unfolded in terms of firming up its case this had no such bearing on the appeal itself. In fact, the final UU conceded more than had originally been offered.
16. Accordingly, for the reasons given above, and relating both to procedural and substantive grounds, I am satisfied that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been fully demonstrated.
17. I therefore refuse the application for an award of costs.

Timothy C King

INSPECTOR