



Costs Decision

Site visit made on 7 February 2023

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 March 2023

Costs application 1 in relation to Appeal Ref: APP/B2355/W/22/3307508 (Appeal A)

Land at Highfield Park, Haslingden, Lancashire, Rossendale BB4 4BH

- 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 Studley Developments Ltd for a full award of costs against Rossendale Borough Council.
 - The appeal was against the refusal to grant consent, agreement or approval to details required by a condition of a planning permission
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Costs application 2 in relation to Appeal Ref: APP/B2355/W/22/3307521 (Appeal B)

Land at Highfield Park, Haslingden, Lancashire, Rossendale BB4 4BH

- 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 Studley Developments Ltd for a full award of costs against Rossendale Borough Council.
 - The appeal was against the refusal to grant consent, agreement or approval to details required by a condition of a planning permission
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Costs application 3 in relation to Appeal Ref: APP/B2355/W/22/3307508 (Appeal A)

Land at Highfield Park, Haslingden, Lancashire, Rossendale BB4 4BH

- 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 Rossendale Borough Council for a full award of costs against Studley Developments Ltd.
 - The appeal was against the refusal to grant consent, agreement or approval to details required by a condition of a planning permission
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Costs application 4 in relation to Appeal Ref: APP/B2355/W/22/3307521 (Appeal B)

Land at Highfield Park, Haslingden, Lancashire, Rossendale BB4 4BH

- 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 Rossendale Borough Council for a full award of costs against Studley Developments Ltd.
 - The appeal was against the refusal to grant consent, agreement or approval to details required by a condition of a planning permission
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Decisions

1. The applications for awards of costs are refused.

Reasons

2. 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. Unreasonable behaviour can be either substantive in nature, relating to the issues arising from the merits of the case or procedural, relating to process.

Costs Applications 1 and 2

4. The appellant's case is that sufficient information was provided with the applications to discharge the conditions and that no meaningful evidence to substantiate the reasons for refusal has been provided by the Council in response to the appeals. Additionally, the appellant considers that the Council has not determined similar cases in a consistent manner.
5. In respect of Cost Application 2 the appellant further states that the Council reached its decision on the application, the subject of Appeal B, several weeks after the date by which the Council should give notice of its decision, and without prior communication despite requests for feedback.

Adequacy of information submitted with the applications

6. It is clear from the response of United Utilities (UU) in its letter of 5 September 2022 that the information submitted in response to condition 18 was not satisfactory, as they clearly recommended that the condition should not be discharged, providing an explanation as to their reasons for that recommendation.
7. Further email correspondence from UU to a representative of the appellant, dated 29 September 2022 was sent several weeks after the Council issued its decision. It therefore could not have been taken into consideration by the Council in reaching that decision. Furthermore, UU clarify that the information it had received should be sent to the Council so that it can carry out further consultation. Effectively, UU were encouraging the submission of a further application for approval of details required by the condition.
8. Such correspondence therefore does not constitute confirmation from UU that the information provided in support of the discharge application was sufficient or demonstrate that the Council was unreasonable in reaching the decision that it did.
9. It will be seen from my decision that I have found that it has not been demonstrated that sufficient detail was submitted to establish the stability of the site and surrounding land as required by condition 15. The Council's Structural Engineer (SE) did indicate that he had no comments regarding the stability of the site. However, the SE confirms in his email correspondence of 5 July 2022 that the information submitted has never addressed the original condition.

10. The comments received from the Council's advisors therefore confirms that supplementary, or additional, information was required to that submitted. As such the decision to refuse the applications, the subject of Appeals A and B, was not contrary to the advice that the Council had received.
11. The reasons for refusal in respect of Appeals A and B indicated that the information that had been submitted was not adequate. The Council has provided sufficient, and reasoned statements that demonstrate that inadequate details were provided to satisfy the requirements of conditions 18 and 15. As I have set out above, such statements included correspondence from the Council's advisors which supported the decisions that were reached.

Consistency of decisions

12. My attention has been drawn to a further application that has been submitted to the Council. I acknowledge that consistency in the planning process is important. However, the further application is for planning permission and, as far as I am aware, has not been determined.
13. The decision to be made on the further application differs significantly from that made on those which are the subject of appeal as the Council can consider whether, based on the information provided, planning permission can be granted subject to different planning conditions. The scope of consideration for the appeal applications is, however, limited to whether the conditions in question have been satisfied by the submitted information.
14. Therefore, the further planning application is not similar in nature to those before me and as such has very limited weight in my decision. As such, even if the Council permit that application without requesting further information that does not amount to unreasonable behaviour when making its decisions on the planning applications before me.

Timeliness

15. The comments of the Council's SE were received on 1 June and 5 July 2022, but the decision was not issued until 25 August 2022. There was therefore a delay of over 1 month between the receipt of the advice and the determination of the application relating to condition 15.
16. I acknowledge that unnecessary delays on the part of the Council can amount to unreasonable behaviour under the costs regime. The Council's submission, however, shows that correspondence regarding the requirements of condition 15 and other outstanding conditions was sent on 24 January 2022. Such correspondence clearly indicated that slope stability issues must be addressed over the site as a whole and in particular the exposed boundaries to the perimeter of the site.
17. As set out in my appeal decision the submitted information did not cover the whole site and surrounding land and, accordingly, was not sufficient to address the requirements of the condition. Therefore, given the contents of the January correspondence in addition to the wording of the condition, the refusal should not have come as a surprise.
18. I do not consider that the delay in issuing the decision led to an otherwise unnecessary appeal. Furthermore, the Council had already given commentary as to what was required to satisfy condition 15 prior to the submission of the

appeal application. It is not, therefore, unreasonable for the Council to have not provided a response to the appellant's requests for updates, albeit that would have been good practice.

Conclusion

19. In respect of Cost Applications 1 and 2, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated by the appellant.

Costs Application 3 and 4

20. The Council's case is that pursuing the appeals without accounting for the inadequate information submitted as part of the applications and providing additional information in support of the appeals has caused the Council to incur unnecessary and wasted expense in preparing statements and rebuttals.
21. Whilst I have dismissed the appeals, the appellant has sought to highlight, within its case, information from the relevant application submissions, and provide the comments received on such information to support its assertion that it was adequate. Such evidence was not so inadequate to justify a conclusion that the appellant acted unreasonably.
22. Further information was submitted by the appellant as part of the appeal submission. However, as I have indicated above, the appellant did not solely rely on it to make its case. Although I did not take that further information into consideration, for the reasons set out in the appeal decisions, the submission of it did not amount to unreasonable behaviour. Furthermore, the Council has not addressed it within its appeal submissions. As such it has not expended additional time and expense in addressing such information.
23. In respect of Cost Applications 3 and 4, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated by the Council.

Elaine Moulton

INSPECTOR