
Costs Decision

Site visit made on 27 March 2023

by Neil Pope BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 April 2023

Costs application in relation to Appeal Ref: APP/Q1153/W/22/3293078 Town Meadow, Bridestowe, Okehampton, Devon, EX20 4EG.

- 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 Leander Developments for a full award of costs against West Devon Borough Council (the LPA).
 - The appeal was against the refusal of an application for the grant of reserved matters pursuant to an outline planning permission for up to 24 dwellings.
-

Decision

1. The application is approved insofar as a partial award of costs is made. Costs are awarded in the terms set out in the Order below.

Reasons

2. The Government's Planning Practice Guidance advises that parties in planning appeals normally meet their own expenses. However, costs may be awarded against a party who has behaved unreasonably and thereby directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. One of the aims of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities and to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay.
4. The LPA took many weeks to determine the reserved matters planning application. It is also unclear what, if any, consideration it gave at application stage to the revised plans that had been submitted by the applicant or why it chose not to reconsult the Environment Agency on the important matter of flood risk. I recognise the pressures facing local planning authorities, not least staffing issues, and the difficulties this can create. Nevertheless, applicants are entitled to have their applications dealt with in a timely manner and to receive an explanation as to how any scheme amendments are being processed.
5. Whilst I appreciate the applicant's frustration in respect of the length of time it took the LPA to taken to determine the application, the applicant could have submitted an appeal against non-determination if it so wished. It would be for others to determine whether or not the LPA's actions during the processing of the application caused any injustice. There is nothing from the procedural side of the appeal (I deal with substantive matters, relating to issues arising from the merits of the appeal below) to demonstrate that the LPA behaved unreasonably and caused the applicant to incur unnecessary or wasted expense.

6. In dismissing the planning appeal, I have, in effect, found that the proposal does not comprise development that clearly should have been permitted. Whilst the principle of the development has been established by the outline consent on the site neither this, nor the ensuing benefits of providing housing (including some affordable homes) on the site overrides the need for careful consideration to be given to the reserved matters. It is also important to secure housing that is appropriate to the context of the site and which comprises good design, as well as ensuring there would be no increase in the risk of flooding based upon up-to-date information.
7. Having considered all of the evidence and representations submitted to me, and after visiting the site and surroundings, I have found in the LPA's favour on the issues of design (including the likely impact upon some boundary trees) and flood risk. The LPA did not therefore act unreasonably in refusing permission on the basis of such concerns and the applicant did not incur unnecessary or wasted expense in addressing these matters at appeal. A full award of costs cannot therefore be justified.
8. After receiving the appeal, the LPA correctly reviewed its reasons for refusal. In so doing, it found that it could not support its fourth reason for refusal relating to biodiversity. The applicant was informed of this on 5 September 2022.
9. The LPA decided not to pursue its fourth reason for refusal on the basis of "*evidence that should have been submitted with the application*". However, notwithstanding the lengthy period it took the LPA to determine the application it would appear that no request for further evidence in respect of biodiversity was requested. This sits awkwardly alongside an informative on the LPA's decision notice which states "*the Local Planning Authority has endeavoured to work proactively with the applicant, in line with National Planning Policy Framework, to ensure that all relevant planning considerations have been appropriately addressed.*"
10. Prior to the determination of the application, it must have been apparent to the LPA that its concerns in respect of biodiversity were capable of being addressed through the submission of further supporting information. In this instance, it was always going to be the case that LPA would have difficulty substantiating such a reason for refusal. The failure of the LPA to approach the applicant and request further information amounts to unreasonable behaviour. This caused the applicant to incur unnecessary or wasted expense by having to respond to an issue at appeal that should not have formed a reason for refusal.
11. By 5 September 2022, the applicant had submitted a Full Statement of Case in support of its appeal. The costs of presenting evidence in this way and having to refute an unnecessary reason for refusal go beyond those which could reasonably be expected in response to a request for further information at application stage. The LPA acted unreasonably by withholding permission on biodiversity grounds and caused the applicant to incur unnecessary or wasted expense in having to address this matter at appeal. The applicant is therefore entitled to recover its costs on this matter over the period of time from 21 December 2021 (when permission was refused) until 5 September 2022.
12. I found with the appeal decision that the proposed affordable houses would not be sensitively integrated into the development. The LPA did not therefore act unreasonably in expressing concern over this element of the development. However, no cogent evidence was submitted to substantiate the LPA's concerns

that the size of some of the proposed dwellings or the housing mix would fail to assist in addressing local housing needs. There was also nothing of substance to support the LPA's concern that the proposal would exacerbate any imbalance in the local stock of housing. The applicant therefore incurred unnecessary or wasted expense in refuting the LPA's third reason for refusal.

13. I conclude that the LPA acted unreasonably in respect of some issues and this behaviour caused the applicant to incur unnecessary or wasted expense. A partial award of costs is therefore justified.

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 West Devon Borough Council shall pay to Leander Developments the costs of the appeal proceedings described in the heading of this decision. These costs shall be limited to those incurred by the applicant in responding to the LPA's reasons for refusal numbered three (housing mix) and four (biodiversity).
15. The applicant is now invited to submit to West Devon Borough 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. In the event that 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 Office is enclosed.

Neil Pope

Inspector