The Planning Inspectorate

Costs Decision

Site visit made on 16 January 2023

by M Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 April 2023

Costs application in relation to Appeal Ref: APP/W1525/W/22/3297035
The Barn, White Elm Road, Bicknacre, Chelmsford CM3 4LR

- 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 Chelmsford City Council for a full award of costs against Mr C Clark.
- The appeal was against the refusal of planning permission for demolition of existing outbuildings and creation of one new detached chalet bungalow including new access.

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The 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 process.

3. The Council alleges that it was clear prior to the submission of the planning application subject to the appeal that the provision of speed survey evidence and a payment towards mitigation of the impacts of the development on the integrity of 'habitats sites', as defined by the National Planning Policy Framework, would have been capable of addressing the Council's objections to the scheme. It is put forward that the appellant has acted unreasonably as the surveys should have been submitted and the payment made during the planning application process and thus the appeal was entirely unnecessary.

4. The PPG sets out examples of unreasonable behaviour which may result in costs awards. These include: resistance to, or lack of co-operation with other parties in providing information, or discussing the application or appeal; delay in providing information or other failures to adhere to deadlines; only supplying relevant information at appeal when it was requested, but not provided, at application stage; and introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.

5. The planning application subject to the appeal followed the refusal of a scheme[1] for development at the site entailing a comparable access arrangement. Details of that and other similar applications have been supplied. Evidence has also been provided of pre-application advice and correspondence

[1] Council reference: 21/00947/FUL

between the main parties before the application subject to the appeal was submitted.

6. The evidence demonstrates that prior to the appeal, the Council highlighted that speed surveys may have been able to address its highway safety concerns. However, in correspondence[2] this was caveated as speculation, and it also indicates that a scheme involving a second site access like the one proposed may have been resisted even with surveys undertaken due to other considerations. Nothing before me indicates that prior to refusing the application subject to the appeal the Council specifically requested that surveys were undertaken, or that such would address its concerns with certainty.

7. Furthermore, a note[3] covering matters such as collision data was produced to support the application subject to the appeal in an attempt to address the highway safety concerns. It was reasonable for the appellant to try to justify the proposal in that manner as an alternative to surveys, and the correspondence shows that attempts were made to engage with the Council on highway safety matters. Accordingly, the evidence does not suggest that the appellant resisted cooperation with the Council.

8. Additionally, the surveys did not have the effect of changing the development on the ground, or thus amending the proposal, but constituted the provision of additional information to support the claim that the development would not be harmful. Accordingly, the submission of the surveys was not contrary to Annexe M of the Procedure Guide[4]. Moreover, section D.2.3 of the Procedure Guide states that an appellant may add to the information they supplied with their application with their statement of case submissions. The surveys were provided at the start of the appeal and therefore no delays or failures to adhere to deadlines have been demonstrated in this respect. For the above reasons taken together, I find that it was not unreasonable for the appellant to provide the surveys for the appeal.

9. Conversely, it has consistently been clear from previous applications at the site and other correspondence prior to the submission of and during the application that residential development of the sort proposed would require a payment towards mitigation for habitats sites. The need for a payment has not been contested and compelling reasons for the failure to make it have not been provided. The appellant thus acted unreasonably in failing to make the payment during the application process, and the Council has been put to unnecessary expense in having to make a case at appeal about that matter, which relates to its second refusal reason.

10. The appellant has put forward that the Council could have provided a short statement to confirm its position following the submission of the surveys and the payment, instead of setting out detailed appeal and costs application statements. However, the Council could not have known definitively if I were to take the surveys or the payment into account in determining the appeal. Accordingly, it was appropriate for the Council to prepare a robust case at appeal to address all potential likely scenarios.

[2] Email correspondence in Appendix CCC2 of the Council's Application for an Award of Costs
[3] Note reference: L1-DR-VRP1326-01
[4] Procedural Guide: Planning appeals – England, updated 21 December 2022

Conclusion

11. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in respect of the appellant's failure to make a habitats sites mitigation payment during the application process. A partial award of costs is justified, to cover the expense incurred by the Council in having to make a case at appeal regarding matters relating to its second refusal reason.

Costs Order

12. 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 Mr C Clark shall pay to Chelmsford City Council, the costs of the appeal proceedings described in the heading of this decision, which are limited to those costs incurred in making its case at appeal regarding matters relating to its second refusal reason as specified on the decision notice given reference 21/01865/FUL. The costs are to be assessed in the Senior Courts Costs Office if not agreed.

13. Chelmsford City Council is now invited to submit to Mr C Clark, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Mark Philpott

INSPECTOR