



Costs Decision

Hearing held on 13 April 2023

Site visit made on 13 April 2023

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 May 2023

Costs application in relation to Appeal Ref: APP/W0530/W/21/3287502 Land to the North and South of Bartlow Road, Linton, Cambridgeshire CB21 4LY

- 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 Abbey Developments Ltd for a full award of costs against South Cambridgeshire District Council.
 - The appeal was against the refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Decision

1. The application for a full award of costs is allowed.

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (PPG)¹ states that an award of costs may only be made against a party who has behaved unreasonably; and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The PPG goes on to explain that a local planning authority is at risk of a substantive award of costs if it fails to review its case promptly following the lodging of the appeal or produce evidence to substantiate each reason for refusal.
3. During the hearing the Council confirmed that its concerns relate to the capacity of the sewer in dry weather conditions², and the evidence underpinning this is the report prepared by AE Designs Ltd in 2016. As a result, the Council's case is not vague or generalised. Indeed, it was quite specific and was narrower in scope than that advanced by Linton Parish Council (LPC), which also raised concerns about surface/ground water ingress and discharge into the sewer system.
4. The proposal had been recommended for approval to the Council's planning committee in September 2021. The reasons for this are set out in a detailed report and focus on two material considerations. The first being that there was no objection from Anglian Water (AW), the statutory sewerage undertaker. The second was that the findings in the AE Designs Ltd report, which underpinned the rationale for imposing Condition 11, had been contested by

¹ Paragraph: 030 Reference ID: 16-030-20140306

² i.e. without taking into account infiltration and discharge from ground/surface water during periods of rainfall

the appellant through a letter from PFA Consulting, a firm of engineers specialising in drainage and sewerage matters.

5. Members of the committee are entitled to go against the recommendations of Officers. If they were not, then the planning committee would have no meaningful purpose. Nevertheless, a decision to depart from technical advice must be taken carefully and should be based on cogent evidence.
6. At the committee meeting Members were addressed by the Parish Council and were apparently shown photographs of recent sewer flooding. Reference was also made to the AE Design Ltd report and the flood event on the 20 July 2021, which at that point had not been reported upon³ by the Local Lead Flood Authority. The Local Member also referred to the AE Design Ltd report and stated that it showed the whole sewer system was close to capacity. No acknowledgement was made of the letter by PFA Consulting.
7. Subsequently, Members did ask LPC to respond to the appellant's rebuttal of the AE Design Ltd report. LPC did not address the methodological concerns raised by PFA Consulting in their response. Members did not return to this matter in detail and seemed to have accepted the validity of the findings in the AE Design Ltd report, despite it being challenged. The reasons for not accepting the points in the letter submitted by PFA Consulting, and discussed in the committee report, were not given. This is significant, because as things stood before Members, the PFA Consulting letter had not been subject to any substantive technical challenge and supported the advice of AW.
8. Moreover, AW, who were present at the meeting, confirmed that its records of sewer flooding over the past five years related to blockages and not a general lack of capacity. Again, Members did not seem to register the significance of this point as it contradicted what LPC had said about the system flooding regularly due to a lack of capacity.
9. It is therefore difficult to understand, from a reading of the transcript of the meeting, why Members departed from the advice of its Officers, AW and PFA Consulting and why it preferred the evidence from LPC, which is largely predicated on the advice from AE Designs Ltd. The advice from both AW and PFA Consulting was given by experts and post-dated the report from AE Designs Ltd and the Council's decision on the outline application. The technical context had therefore evolved. Members should therefore have discussed and scrutinised this evidence in more detail, with clear and cogent reasons given for departing from it. The appellant did not directly address the planning committee, but the findings of PFA Consulting should have been considered regardless of this.
10. The advice given by AW at the committee meeting was in some ways contradictory. Members were advised that surface water should not be considered in a capacity assessment due to the system being closed, but also that 25% infiltration was factored in, and that flow monitors would be installed to better understand the issue of infiltration. However, the Council's concerns nevertheless related to the capacity of the system in dry weather conditions. AW directly addressed this point, and were very clear that following their technical assessment, the system has capacity in 'dry weather' conditions.

³ The subsequent report is dated the 6 June 2022

11. It would therefore seem that the Council's decision was predicated on a challenged and flawed report (by AE Design Ltd), but not the unchallenged rebuttal (by PFA Consulting) and the advice of AW. On this basis questions must be asked about the robustness of the Council's rationale for the decision.
12. It is true to say that Condition 11 as originally drafted can be adhered with⁴, and may even be preferable, but these were not the questions Members needed to grapple with. They were tasked with ascertaining whether a connection to Bartlow Road would be harmful. Similarly, it is true that Condition 11 in its original terms could have been appealed, but the applicant took control of the site after the period in which this could have been done had lapsed.
13. Matters were further compounded during the appeal process. Additional submissions were made by PFA Consulting as part of the appellant's appeal, but the critique of the methodology used by AE Designs Ltd (the discharge unit methodology) was not addressed in the Council's appeal statement or at the hearing. Indeed, the Council confirmed that it would be relying on the AE Designs Ltd report and that no other technical evidence, including a rebuttal of PFA Consulting's reports, would be submitted.
14. In effect, the Council relied on a report with a flawed methodology. These flaws had been drawn to its attention before the committee meeting and subsequently. However, the methodological flaws have not been substantively addressed in its appeal evidence with a technical rebuttal. As a result, there is no reasonable basis for the Council to depart from AW's technical and specialist advice that the sewer system has capacity in dry weather conditions. The Council also sought to rely on LPC making the case against the proposal, but that is unreasonable when it is the local planning authority that made the decision.
15. A further aggravating factor is that during the hearing the Council conceded that Policy CC/8 of the Local Plan had been referred to in the reason for refusal in error. Furthermore, the Council also confirmed that because the appellant had reached agreement with the relevant service provider (AW), there would be no conflict with Policy CC/7. It would therefore seem that the Council had refused a proposal that adhered to the development plan and the material consideration advanced for doing so was, in the main, the findings in a report by AE Designs Ltd that are based on a flawed methodology.
16. Had the Council properly reviewed its case when the appeal was submitted, or at any point before or during the hearing, then its position would likely have been different. In any event, the Council has failed to produce adequate evidence to substantiate its reason for refusal that the sewer system lacks capacity to accommodate the wastewater flows from the proposed development in dry weather conditions. An argument based on surface/ground water infiltration/discharge would have had more of a basis, but this was not the Council's case. Unreasonable behaviour has therefore occurred. This has resulted in the appellant being put to unnecessary and wasted expense which included submitting the appeal, preparing a statement and rebuttal, providing additional evidence, and attending the hearing.

⁴ Due to the approval of application S/1963/15/CONDE

17. In conclusion, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has occurred. The application for costs is therefore allowed.

Costs Order

18. 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 South Cambridgeshire District Council shall pay to Abbey Developments Ltd the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicant is now invited to submit to South Cambridgeshire District 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.

Graham Chamberlain
INSPECTOR