



Costs Decision

Site visit made on 19 April 2023

by Gareth Wildgoose BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 May 2023

Costs application in relation to Appeal Ref: APP/D2320/W/22/3312908 Land at Blackburn Road, Wheelton, Chorley, Lancashire

- 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 Smith & Love Planning Consultants Ltd for a full award of costs against Chorley Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an outline application for planning permission for residential development of up to 40 dwellings with access from Blackburn Road and all other matters reserved.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 PPG provides examples of unreasonable behaviour by local planning authorities. This includes procedural matters such as a lack of co-operation with other parties. Unreasonable behaviour can also include substantive matters such as preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other considerations; vague and generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis; and not determining similar cases in a consistent manner. The application for costs relates to each of these examples.
4. The PPG also indicates that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. Furthermore, in an appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.
5. With regard to the above, the planning application is dated 8 July 2021 and based on the evidence before me, was submitted to the Council and made valid on 9 July 2021 with a 13-week determination date for the application of 8 October 2021. It was, therefore, open to the applicant to appeal against non-

determination after that latter date. The appeal against non-determination was submitted on 10 December 2022.

6. In terms of the circumstances which led to the appeal against non-determination of the application, the evidence indicates that there were two rounds of consultation carried out and completed by the Council which ended on 27 August 2021 and 20 December 2021 respectively. It is evident that the applicant liaised with Council officers throughout in seeking to address issues as they arose. It is also notable that the original case officer left the Council during that period and was replaced by a new officer on 1 December 2021 who requested an extension of time until 14 January 2022 which was agreed by the applicant. This was seemingly to enable the application to be reported to the Council planning committee on 11 January 2022, subject to anticipated consultation responses from Lancashire County Council (LCC) local highway authority, the Ecology Unit and the Council's environmental protection service.
7. In the context of the above, it is apparent that there were subsequent delays in determination of the application which were reasonable to address issues raised in an initial LCC local highway authority response on 13 December 2021 and that they were seemingly overcome in principle by 7 June 2022, subject to off-site highway improvements to be secured by condition. Furthermore, during this period, it is evident that there were also ongoing discussions in relation to securing biodiversity net gain with requested information submitted to the Council on 13 June 2022, and the applicant thereby agreeing to a further extension of time until 31 July 2022 to allow the application to be reported to the Council's Planning Committee on either 14 June 2022 or 12 July 2022. In advance of that process, the Council also additionally requested a response from the LCC Archaeology Service, together with an updated Education Contribution Assessment from the LCC School Planning Team that were received on 23 and 29 June 2022 respectively. To my mind, despite the relatively late stage of such requests these appear to be reasonable actions to provide the Council's Planning Committee with the most up-to-date information to make their decision. However, this evidently resulted in the application being unable to be reported in time for the meeting on 12 July 2022, with the subsequent 16 August 2022 meeting then subject to a cancellation outside of Council officers' control.
8. Having regard to the cancellation of the August 2022 meeting, I consider it is reasonable that the subsequent Council Planning Committee meeting scheduled for 13 September 2022 may have been oversubscribed. Furthermore, it is evident that the Council made all reasonable endeavours at that stage to address the situation by referring the application to a special meeting on 21 September 2022 and notifying the applicant on 1 September 2022, with a further extension of time thereby agreed until 23 September 2022. In the interim period, it is noted that the Council case officer on 2 September 2022 had informed the applicant that the application would be recommended for approval, with subsequent agreement reached on draft heads of terms of the planning obligations and planning conditions on 5 September 2022.
9. In light of the above it is unfortunate, but eminently reasonable that following the death of HM Queen Elizabeth II on 8 September 2022, the Council Planning Committee meeting on 13 September 2022 was cancelled as a mark of respect. To my mind, it is also understandable that items scheduled for that meeting would be rescheduled to the next available meeting date on 21 September

2022 and therefore, that the determination of the application be postponed until a subsequent meeting. Moreover, it is also reasonable that further delays would have arisen in any case as a result of the Council's separate General Purposes Committee decision on 7 September 2022. This necessitated further assessment of any transport related impacts arising from the application, amongst others, as part of collation of evidence to inform the preferred options for the emerging Central Lancashire Local Plan. Whilst the timing of that decision and the resultant delays caused were clearly inopportune, I cannot find such an approach to be unreasonable given the need to consider and assess the individual and cumulative effects on the local highway network as part of both the determination of an application and the Plan-making process.

10. Having regard to the above, I note that subsequent extensions of time were only agreed until 11 November 2022 and I sympathise with the applicant's dissatisfaction and frustration regarding the failure of the Council to determine the application given the passage of time since its submission. Nonetheless, I find that the delays in reporting the application to the Council's Planning Committee up to and until their receipt of the Tetra Tech report on 7 December 2022 reflects a reasonable approach with proper explanations for unavoidable delays in the application process by virtue of the particular circumstances I have outlined. It follows that, when taking account of necessary lead in times for referral of the application to the next Council Planning Committee after 7 December 2022 and allowing for a necessary period of time for the Council to review the report before contacting and making it available to the applicant, I also find that the appeal could not reasonably have been avoided at that stage as it was submitted only three days later.
11. In response to the applicant exercising their right to submit the appeal on 10 December 2022 and a start date letter issued by the Planning Inspectorate on 22 February 2023, the Council on 23 February 2023 provided a summary of its Planning Committee decision on 7 February 2023. The decision confirmed that if the application had proceeded to determination, it would have been refused for two reasons. This firstly would be due to the Council considering the proposal to not be consistent with the development plan as it is not within an area that has been identified for growth and investment, and secondly, that it would not provide safe access for pedestrians or a sufficient level of cycling infrastructure. The decision summary was accompanied by a Committee Report prepared by officers with the same recommendations and an undated document denoted as Item 3a providing an addendum update to the Committee Report addressing disputes between Council officers and the applicant relating to highway matters. The matters of dispute include how the summary of findings of the Tetra Tech report were being represented. The applicant has provided associated evidence of an e-mail dated 6 February 2023 to two Borough Councillors which expressed concerns that the officer report omits the conclusion and key findings of the Tetra Tech report, and that the imposition of extensive, non-essential highway improvement works would make the development financially unviable.
12. The Council subsequently provided a statement of case on 29 March 2023 which confirmed that following a MS Teams call with the applicant and their transport consultant on 17 March 2023, a revised suite of mitigation measures had been agreed between the parties with subsequent agreement from LCC Highway Services confirmed in its Appendix A. Consequently, the Council statement of case sought only to substantiate the first potential reason for

refusal identified in the Planning Committee decision of 7 February 2023 by virtue of reference to the Committee Report, conflict with Policy 1 of the Central Lancashire Core Strategy (CS) and the weight afforded to it in the planning balance.

13. It will be seen from my appeal decision, that I have found conflict with the development plan in the terms identified by the Council, specifically the harm arising from the conflict with Policy 1 of the CS relating to the settlement strategy and loss of greenfield land in agricultural use. However, when undertaking the necessary planning balance in the context of the National Planning Policy Framework (the Framework), the adverse impacts in those respects do not significantly and demonstrably outweigh the benefits and therefore, the appeal is allowed and planning permission is granted. However, such findings arise from matters of judgement assessed against and relative to the interpretation of development plan policies when taken together and balanced against the weight to be afforded to relevant policies in the context of the Framework. Whilst several previous appeal decisions in Chorley Borough have been drawn to my attention where similar balances were applied and planning permission was granted, the circumstances before me were different in both locational and settlement strategy hierarchy terms. Consequently, irrespective of the outcome of the appeal, I cannot find that the Council behaved unreasonably in reaching a different view to my own on the planning balance given the judgements I necessarily made that led to my conclusion.
14. In reaching that view, I have taken into account that before the appeal was submitted, a Council officer on 2 September 2022 had previously indicated that the application would be recommended to the Council Planning Committee for approval. Nonetheless, in my experience, it is not uncommon that a provisional Council officer recommendation be overturned by more senior Council officers in advance of its reporting to a Planning Committee, nor does such an approach constitute unreasonable behaviour if each of the potential reasons for refusal are capable of being substantiated.
15. It is on that latter point that I turn to specifically and only to the second potential reason for refusal as reported to the Planning Committee on 7 February 2023 which subsequently was not pursued beyond the Council statement of case on 29 March 2023. In that respect, it is my view, that the Council officers report to its Planning Committee insofar as it represented the conclusions and recommendations of the Tetra Tech report of 7 December 2023 did include potentially inaccurate assertions about the proposal's impact and the extent to which such matters could be further discussed, negotiated and/or resolved with the applicant during the appeal process. Based on the evidence before me, this appears to have been influenced by the Council officers reaching a view that the applicant was unwilling to negotiate further based on expressed concerns that additional contributions to off-site highway (pedestrian and cycling) improvements would make the development financially unviable. However, this assertion was evidently based on the Council requirement for improvements such as more extensive footway alterations and cycle lane provision that would appear to be much more costly enhancements than those subsequently negotiated with the applicant during the appeal.
16. In the context of the above, the Planning Committee decision identifying a potential reason for refusal relating to provision of safe access for pedestrians or a sufficient level of cycling infrastructure was not substantiated nor pursued

further in the Council statement of case. This was evidently due to Council satisfaction with a different scheme of improvements that was negotiated with the applicant. It will be seen from my appeal decision that I find that those improvements to footpaths for pedestrians and cycle infrastructure as proposed, are necessary and sufficient to make the development acceptable.

17. It follows that I find that the Council behaved unreasonably when making inaccurate assertions about the proposal's impact specifically in terms of the unsubstantiated necessity for the extent of highway improvements required, given the suitability of alternatives negotiated during the appeal process. The appeal was against non-determination which I have found could not have been reasonably avoided and therefore, the preparation of initial highways evidence to support the applicant's statement of case was not of itself unnecessary or wasted expense. Nonetheless, the Council's flawed approach to consideration of access for pedestrians and cycling infrastructure during the appeal inevitably required that the applicant expend additional time and resources in rebuttal, including preparing further evidence, following the Planning Committee decision of 7 February 2023 and prior to the Council statement of case of 29 March 2023. The preparation of such evidence, albeit relatively limited, constitutes unnecessary and wasted expense for the applicant that could have been avoided if the Council's unreasonable behaviour had not occurred. A partial award of costs relating solely to the applicant's preparation of additional evidence relating to access for pedestrians and cycling infrastructure between 7 February 2023 and 29 March 2023 as part of the appeal is, therefore, justified.

Conclusion

18. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. It relates specifically and only to the Council's approach relating to access for pedestrians and cycling infrastructure during the appeal. The application for the award of costs, therefore, succeeds in part and a partial award of costs is made specific to the wasted expense incurred by the applicant when preparing additional evidence relating to access for pedestrians and cycling infrastructure in the period between 7 February 2023 and 29 March 2023 during the appeal.

Costs Award

19. 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 Chorley Borough Council shall pay to Smith & Love Planning Consultants Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the preparation of additional evidence relating to access for pedestrians and cycling infrastructure between 7 February 2023 and 29 March 2023; such costs to be assessed in the Senior Courts Costs Office if not agreed.
20. The applicant is now invited to submit to Chorley 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.

Gareth Wildgoose
INSPECTOR