



Costs Decision

Inquiry held on 1 – 3 August 2023

Site visit made on 3 August 2023

by Jonathan Price BA(Hons) DipTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 5th September 2023

Costs application in relation to Appeal Ref: APP/P1425/W/23/3318089 Land between The Broyle and Round House Road, Ringmer, East Sussex BN8 5GD

- 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 Ashill Regen for a full award of costs against Lewes District Council.
 - The appeal was against the refusal of planning permission for erection of 53no dwellings (mix of houses and flats) and associated landscaping, car parking, access and ancillary works (amended description - reduction in number of units, removal of third-storey from flats, additional car parking, removal of street lighting).
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Decision

1. The application for an award of costs is allowed 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. Awards against a local planning authority may either be procedural, relating to the appeal process, or substantive, relating to the planning merits of the case.
3. In this case, following cross examination over its planning evidence at the Inquiry, the Council withdrew its defence of the two outstanding reasons for refusal, accepting there to be no conflict with the development plan arising from either. In paragraph 049¹, the PPG gives examples of the types of behaviour which may give rise to a substantive award, which the applicant mainly relies on. Of these, the Council acknowledges that ultimately it had failed to produce evidence to substantiate each reason for refusal. In consequence it had, with hindsight, prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The Council is therefore not disputing that there are substantive grounds for supporting an award of costs based on the PPG. However, it is relying on making such an award being a discretionary power, rather than a legal obligation. The Council is seeking extenuating circumstances be taken into account, as the PPG allows², whereby unreasonable behaviour might not have

¹ Paragraph: 049 Reference ID: 16-049-20140306 Revision date: 06 03 2014

² Paragraph: 046 Reference ID: 16-046-20140306 Revision date: 06 03 2014

occurred when examining the full picture leading up to the Inquiry. Four factors are put forward as extenuating circumstances that might contribute to a discretionary decision not to award costs.

5. The first was that the position taken at the start of the Inquiry was consistent with the original officer's recommendation. However, this is not adequate mitigation against a finding of unreasonable behaviour. This would appear to be a further example given in PPG paragraph 049, of a Council not reviewing a case promptly following the lodging of an appeal. The evidence shows the Council's Committee did review the four original refusal reasons on 19 April 2023, and resolved to defend only the two taken to the Inquiry. However, further information arose after the Officer report, notably the Economic Needs Assessment April 2023³ which the Council then used in its case. Furthermore, the Council withdrew from two of the three design reasons given in the Officer's report prior to the Inquiry, so was clearly not entirely bound by this.
6. On the first extenuating circumstance put forward, it was reasonably open to the Council to review its position at any time in the period leading up to the Inquiry. A clear opportunity would have been in response to the letter from the appellant dated 14 June 2023. This provided cogent reasons for the Council to reconsider its position over defending the appeal, and at the same time gave notice of a potential application for costs.
7. The second extenuating circumstance was the Council's severely under resourced position, during a period when preparations were underway for several other public inquiries. I note the Council acknowledges that this is not a wholly exculpatory reason. However, it is a material factor which I have considered in exercising discretion over a costs award.
8. The third extenuating factor is the appellant's Inquiry viability evidence not being produced at the time planning permission was refused. However, it was provided prior to the exchange of proofs and in advance of the Inquiry. This gave the Council a reasonable opportunity to reconsider its position before the event.
9. On the fourth point, the Council did promptly withdraw defence of the appeal at the Inquiry, following cross-examination of its planning evidence. However, most of the costs have already been incurred at this point. I accept the applicant's case that this could reasonably have been a decision reached in response to the appellant's 14 June 2023 letter, avoiding the subsequent Inquiry expense.
10. The Inquiry did provide the opportunity for interested party concerns to be fully aired and the policy grounds for the Council's decision to be rigorously tested. Nevertheless, the balance of the considerations put forward weigh strongly in favour of a substantive award of costs. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

11. 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

³ Lewes District Economic Needs Assessment Final Report Lewes District Council – AECOM, April 2023

Lewes District Council shall pay to Ashill Regen, 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.

The applicant is now invited to submit to Lewes District Council, to which a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Jonathan Price

INSPECTOR