



Costs Decision

Hearing held on 19 September 2023

Site visit made on 19 September 2023

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 November 2023

Costs application in relation to Appeal Ref: APP/W0530/W/23/3322754 Land south of The Causeway, Kneesworth, Cambridgeshire SG8 5JB

- The application is made under sections 78, 322 and Schedule 6 of the Town and Country Planning Act 1990, and section 250(5) of the Local Government Act 1972.
 - The application is made by M Scott Properties Ltd for a partial award of costs against South Cambridgeshire District Council.
 - The appeal was against the refusal of planning permission for the erection of 9 self-build dwellings, associated infrastructure and landscaping.
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Decision

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

The case for the applicant

2. The Council did not identify a need for the financial contributions when considering the planning application, and their absence was not a reason for refusal. Indeed, the Officer Report explicitly stated such monetary contributions were unreasonable. Moreover, the signed Statement of Common Ground (the SOCG) confirmed that financial contributions were not necessary. However, the Council nonetheless introduced this matter on the date the SOCG was agreed. In essence, it comprised a new reason for refusal and a backtrack on the SOCG.
3. Moreover, there is no substantive evidence to justify the contributions requested, such contributions have not been recently sought on other self-build schemes in the area, and the Council has failed to consider the nature of the proposal properly.
4. As a result, the Council acted unreasonably in seeking the financial contributions, and additional expense has been incurred in reviewing the requests and in the drafting of the Unilateral Undertaking. A partial award of costs is therefore sought relating to this matter.

The case for the Council

5. Although contributions were not sought with previous similar self-build schemes, in this instance the Council gave consideration to the nature of the proposal when making its request for payments. It does not disagree to any appreciable extent with the timetable outlined by the applicant, confirming that the CIL Compliance Statement was sent on 16 August. However, the requirement was not questioned by the applicant prior to the Hearing.

6. As an Undertaking was required in any event, the applicant had already instructed a solicitor, and addressing the issue of contributions did not involve more work for the legal team. It is accepted though that additional time was spent on the rebuttal at the Hearing.
7. Consequently, the award of costs is not justified.

Reasons

8. 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. The PPG states that examples of unreasonable behaviour which may result in an award of costs against a Council include

- delay in providing information or other failure to adhere to deadlines
- prolonging the proceedings by introducing a new reason for refusal

and

- not determining similar cases in a consistent manner.

These lists in the PPG are not exhaustive, but nonetheless emphasise the importance of consistency and the timely presentation of concerns.

9. Having been expressly confirmed as unreasonable and not necessary in the Officer Report and the SOCG, it was not until on or around the date that the SOCG was signed that the request for contributions was made by the Council and was raised in its own Appeal Statement (submitted to the Inspectorate on the same date as the SOCG). No robust reasons were given as to why the Council changed its position on this matter. Consequently, raising it so late, when there had been ample opportunity to do so earlier, was comparable to the thrust of examples of unreasonable behaviour in the PPG, and showed a failure to adhere to deadlines.
10. I accept that a lack of contributions did not form a reason for refusal on the decision and it was not suggested as being such in the Council's appeal statement. Indeed, the Council confirmed at the Hearing that it would not have brought it forward as a concern had the applicant resisted its request. However, the applicant was not to know this. Rather, confronted by the request, it chose to modify its Undertaking to include the payments, so as to prevent the matter being raised at the Hearing as a further ground for resisting the development. This was an understandable response, to what I consider could be readily perceived as, in effect, a potentially new reason for refusal.
11. Furthermore, I was told the payments had not been requested for comparable schemes that were considered under a similar policy context. The Council also did not explain satisfactorily why, in making this request, it did not follow the unqualified statement in the supporting text to Local Plan Policy TI/8, which said that contributions would not be sought on custom or self-build homes.
12. Accordingly, I therefore find that the Council acted unreasonably in making its request for financial contributions.

13. As I have reached this finding, there is no reason to go through the robustness of the policy and evidence base concerning each of the individual contributions.
14. I acknowledge that, when the request was made, the Undertaking was already being prepared to secure the dwellings as self-build properties. However, it is reasonable to assume that incorporating provisions to deliver the contributions would have resulted in more work for consultants and legal representatives, and indeed could well have involved an appreciable amount of additional time. There would also have been further expense in preparing before the event and discussing the matter at the Hearing itself.
15. Accordingly, I therefore find that unnecessary expense was incurred as a consequence.

Conclusions

16. I conclude that unreasonable actions resulting in unnecessary expense have been demonstrated in relation to the request for financial contributions in connection with the development.

Costs Order

17. 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 M Scott Properties Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to responding to the request for contributions; such costs to be assessed in the Senior Courts Costs Office if not agreed.

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.

JP Sargent

INSPECTOR