



Costs Decisions

Site visit made on 2 October 2023

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 November 2023

Costs applications in relation to:

Appeal A Ref: APP/C3810/W/22/3319189

Appeal B Ref: APP/C3810/W/22/3313681

Land to south of Dukes Road, Fontwell, Westergate, Arundel BN18 0SP

- The applications are made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - Each application is made by Lily Homes for a full award of costs against Arun District Council.
 - Both appeals were against the refusal of outline planning permission for the erection of 9 residential dwellings with some matters reserved.
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Decisions

1. Both applications for a full award of costs are refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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. I have taken the Council's comments on the applications for costs into account in my decisions.
3. As I understand it, in its final costs comments the applicant now refers to Appeal A as 'Scheme 2' (Council's ref AL/179/22/OUT) and Appeal B as 'Scheme 1' (Council's ref AL/39/22/OUT). It had also said one of the appeals was lodged 'in late December 2023' but neither appeal was lodged then. The applicant maintains that this does not diminish the costs applications, including therefore in relation to alleged procedural failings by the Council. The costs application in this respect was also on the basis that Appeal A, Scheme 1 (now corrected to Appeal B, Scheme 2) was lodged in December 2022 and alleging at least a 6 month, or an over 7 month, delay by the Council.
4. The applicant lodged Appeal B on 21 December 2022. However, on 13 February 2023 it asked the Planning Inspectorate (PINS) to hold this appeal in abeyance while a then anticipated Appeal A was lodged and that they be linked. PINS agreed to this request on 21 February 2023, confirming that Appeal B had not by then been started. Appeal A was, though, not lodged until 24 March 2023 and there was subsequent correspondence between PINS and the applicant regarding unclear or missing documents. In both appeals the appellant, appeal site and proposed development were the same.
5. It was, therefore, evident to the applicant from the outset that PINS would link these appeals. This was confirmed to the applicant and the Council on 3 May 2023, being the starting date by then for both confirmed valid appeals.

It also ought to have been unsurprising that this would as a result extend the timeframe for Appeal B and through no fault of the Council. The Council sent the applicant documents for Appeal A soon after the 3 May on 11 May 2023. On 17 May 2023 the applicant asked the Council about documents for Appeal B in light of the appeals having been linked.

6. Notwithstanding the PINS 3 May 2023 letter, the Council was not, it seems, certain about linked Appeal B but the way the appeals were set up on the appeals portal was not due to the Council. It promptly sought advice from PINS on 18 May 2023 and the applicant sought to advance matters with the Council on 13 June 2023, copied to PINS. On 15 June 2023 PINS advised the Council about how to proceed, copied to the applicant. The same day the Council duly progressed Appeal A and Appeal B, including in relation to deadlines such as public notification and statutory consultation.
7. Consequently, the Council was not responsible for any significant delay in Appeal B since 21 December 2022 or in both appeals between 24 March 2023 and 3 May 2023 or between 3 May 2023 and 15 June 2023 or, on the evidence before me, at any other time. Given that the applicant requested Appeal B be held in abeyance and linked to Appeal A there was clearly no prospect of a decision on Appeal B before the applicant decided to lodge Appeal A, or separately from it. The timeframe for either appeal was never in the control of the Council but primarily driven by the applicant. In these circumstances, there is also no apparent reason why the applicant expected the prospect of an independent decision on each appeal, including significantly sooner on Appeal B, or should have anticipated that either or both appeals would be allowed.
8. In Appeal B the applicant relied on reports or plans in essence already commissioned and submitted to the Council as part of the second (resubmission) application AL/179/22/OUT, seeking in this appeal to address RfR2 and RfR3 of the Council's decision on the first application AL/39/22/OUT. The Council was entitled to establish that this information transferred to RfR2 and RfR3 in Appeal B and I gave it this opportunity, including in response to further information or clarifications from the applicant. This did not result in significant delay or costs to the applicant including because these reports or plans had already been prepared. Moreover, such other costs as may have been incurred by the applicant in correspondence with the Council and PINS were fruitful because it narrowed the issues in dispute in Appeal B.
9. There was no change to the development plan between the Council's decisions on each appeal application. I have not, though, been informed of any procedural or legislative barrier to suggest that the Council cannot review or update its position from the same suite of policies between two applications, albeit in this case for the same development. It is, anyway, evident that the Council would have nonetheless refused both applications because LP Policy C SP1 is common to both officer reports and each decision in RfR1. The eventual outcome of each application was the same. The applicant lodged appeals against both decisions and maintained both appeals. Despite these differences the applicant decided to meet the costs of both appeals, including responding to all the policies in each RfR1. Consequently, while the reason for the variance in each RfR1 and in the officer reports is not entirely clear to me, it is of little apparent practical consequence.

10. The Council explained what it considered to be the relevance of the previous appeal decisions¹ in its officer reports and ultimately in its combined appeal statement. It was entitled to give the weight it did to these decisions, including by reference to matters of acknowledged planning interest. Also, to respectfully disagree with the applicant's interpretation of them and relevance to the current appeals. It was clearly not common ground, no matter how strongly the applicant held the views that it did or were frequently conveyed to the Council seeking to change the Council's mind. In these circumstances there was no likelihood of either application being granted permission by the Council for reason of it agreeing with the applicant's position on the previous appeal decisions. These were anyway but one material consideration.
11. The scope of matters covered by the development plan policies in RfR1 in each decision notice is wider than windfall sites in any location. Even though RfR1 was the only reason for refusal in Appeal A and the only reason for refusal maintained by the Council in Appeal B, I do not therefore agree that had the Council found the appeal site to be a windfall site it would have granted planning permission for both applications. This includes because when it refused the application in appeal B it included RfR2 and RfR3; it was not then in possession of the additional documents and plans that subsequently formed part of the Appeal A application and ultimately both appeals.
12. Both matters (previous appeals and windfall site) were, essentially, a difference of planning judgement which I have reconciled in my appeal decisions. It will also be evident that the Council did not, therefore, prevent or delay development which should have been permitted.
13. The Council altered the applicant's description of development in both applications, including adding 'departure from the development plan'. The applicant did not object to this wording at application or appeal stages. The officer reports indicate the Council's consideration of both applications was not prejudiced by this description and that it appreciated the nature of the proposal and relevant policy background. I am satisfied that it properly exercised its development management responsibilities in determining both applications.
14. The circumstances outlined above have led the applicant to decide to pursue the matter through the appeal process.

Conclusion

15. For the reasons given above, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense in the appeal process, as described in PPG, has not been demonstrated. A full award of costs is not therefore justified in either application, nor is a partial award for the same reasons.

Robin Buchanan

INSPECTOR

¹ APP/C3810/W/19/3241407 and APP/C3810/W/21/3278130