
Costs Decision

Inquiry Held on 3-6 and 16 October 2023

Site visit made on 5 October 2023

by Stephen Wilkinson BA BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th November 2023

Costs application in relation to Appeal Ref: APP/P1425/W/22/3313204 Land to the north of Bishops Lane, Ringmer, RH14 9GN

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Thakeham Homes Ltd for a full award of costs against Lewes District Council.
 - The Inquiry was in connection with an appeal against the refusal of planning permission for the erection of 68 dwellings with associated access, drainage, parking, landscaping and infrastructure works.
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Decision

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

The submissions for Thakeham Homes Ltd

2. The application is made on procedural grounds. In summary these cover the following points:
 - Deadlines required by the Procedural Guidance¹ have not been met throughout the lead up to the Inquiry,
 - The Council's reasons for refusal in respect of highways and landscape was not supported by evidence.
 - Inconsistencies in the presentation of evidence, and
 - An adjournment at the end of the Inquiry caused by the Council redrafting its Closings.
3. Furthermore, the Council behaved unreasonably resulting in the applicant to incur unnecessary expense.

The response by Lewes District Council

4. In summary below, the Council's position is as follows:
 - The applicant has not justified how the Council's actions have led to unnecessary expense,
 - The appellant's evidence was submitted after the Council had withdrawn Reasons 1 and 3 and was directed to addressing the Rule 6 party's objections and evidence.

¹ Town and Country Planning (Development Management Procedure)(England) Order 2015

Reasons

5. Planning Practice Guidance (the Guidance) advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expenses in the appeal process.
6. The Council missed deadlines required by the Guidance for the submission of documents and evidence leading up to the Inquiry. These are catalogued by the appellant and not challenged by the Council. Whilst these delays represent unreasonable behaviour it is unclear how this has resulted in unnecessary expense. For example, the appellant was not prompted to provide a rebuttal statement.
7. The Council's Reason 1 of its refusal refers to several matters including landscape and the site's location beyond the settlement boundary. These matters were referred to in comments of interested parties and in the evidence of the R6 party. Although the Council did not maintain this reason for the Inquiry², the appellant's landscape evidence was submitted to the Inquiry. However, given the objections of both the R6 party and interested parties it was my decision to include this as a main issue. In respect of this claim, the landscape evidence was required to address these concerns and unnecessary expense has not been incurred.
8. In respect of the Highways issue (Reason 3 of the Council's decision) I accept that Planning Committee's have a discretion not to accept the professional advice of officers as long as a case could be made for a contrary view. The Highway Authority did not object to the application and suggested conditions as mitigation. Set against this was a range of objections from interested parties concerned about this matter. The Committee operated within its broad discretion on this issue in seeking to include a reason for refusal on highway grounds.
9. Despite the Council subsequently not maintaining this reason as part of its case the appellant prepared highways evidence which was submitted to the Inquiry. However, this was clearly designed to address the issues raised by the Rule 6 party³. The decision to submit this evidence to the Inquiry was the appellant's decision alone and was not prompted by the Council. I do not find therefore that the Council has been unreasonable on this ground.
10. With regard to the Council's inconsistencies during the Inquiry with respect to Reason 1, this matter was dealt with through cross examination in the normal course of the Inquiry. Whilst the Council may have been unreasonable in its approach to the defence of its case, it is unclear how unnecessary expense was incurred by the appellant.
11. Finally, despite the appellant indicating during the Inquiry that it would not submit a claim for costs, on receipt of the Council's Closing Statement on 6 October 2023 it stated that a claim would be submitted. This reversal from its previous position arose from its objection to the Council introducing new arguments in Closing which they considered had either been agreed in the Statements of Common Ground or which had been part of the reasons for

² Ibid 3

³ Mr Harrison PoE p2.

refusal which the Council had decided it would no longer maintain at the Inquiry.

12. Following a short adjournment on 6 October, the Council suggested that it would review and revise its closing statement. A further adjournment was therefore necessary with the Inquiry resuming on 16 October to hear the closing statements before the Inquiry was closed.
13. The Council's action in agreeing to revise its Closing Statement was an admission that its original draft submitted to the Inquiry did not accurately reflect the substance of its case. This amounts to unreasonable behaviour leading to unnecessary expense for the appellant.

Conclusions

14. A large part of the appellant's claim relates to matters which were apparent at the time it had decided it would not pursue a claim for costs. In reviewing their claim made on these grounds, I have found that in several instances the Council demonstrated unreasonable behaviour, and whilst it may have been frustrating for the appellant, it is unclear how this resulted in the appellant incurring unnecessary expense.
15. However, the Council's revision of its Closings led directly to the adjournment and extension of Inquiry time. This matter alone amounts to unreasonable behaviour leading to unnecessary expense. Whilst the redrafting and presentation of the revised statement was designed to avoid a claim, the adjournment now forms part of the claim before me. This is an inevitable result of the Council's redrafting of its Closing Statement which was caused by unreasonable behaviour.

Costs Order

16. 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 the Lewes District Council shall pay to Thakeham Homes Limited, the costs of the appeal proceedings described in paragraph 15 above.
17. The applicant is now invited to submit to Lewes 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. In the event that the parties cannot agree on the amount, a copy of the note on how to apply for a detailed assessment by the Senior Courts Costs office is enclosed.

Stephen Wilkinson

INSPECTOR