



Costs Decision

Hearing Held on 18 October 2023

Site visit made on 18 October 2023

by K Ford MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2023

Costs application in relation to Appeal Ref: APP/C3105/W/23/3325113 Land to the rear of No 12 and South of Dismantled Railway Heath Close, Milcombe OX15 4RZ

- 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 Stoic Roofing and Construction and Abbeymill Homes for a full award of costs against Cherwell District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of 35 2 storey dwelling houses, construction of access off Rye Hill together with garaging, parking, open space with LAP, landscaping and all enabling works.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The PPG also advises that the behaviour of parties during the time of the planning application can be taken into account in deciding whether unreasonable behaviour has occurred, although the costs themselves can only be awarded in relation to unnecessary or wasted expense at the appeal.
4. The PPG identifies that Council's are at risk of an award of costs being made against them if they make inaccurate assertions about the impact of a proposal unsupported by objective analysis and fail to produce evidence to substantiate each reason for refusal.
5. The Council appeal statement covers the issue of density when outlining their reasons for refusal. The Council officer's report also covers the matter. As such Members had information to inform their decision alongside their knowledge of the area to assist in informing the Committee's assessment of the proposal.
6. In making their decision Members took into account the range of information contained in the officer's report, the officer presentation and the points raised by public speakers. This demonstrates an informed and evidenced analysis. The Council's statement of case substantiated their reasons for refusal. Whilst

the applicant is of the view that the Council misused Policy BSC1 and Policy Villages 1 of the Cherwell Local Plan 2011-2031, this relates more to the merits of the case rather than that related to an award of costs.

7. As outlined in my Decision I have reached a different conclusion to the Council regarding the impact of the development. Nonetheless, Members were not bound to follow the officer's recommendation to grant planning permission. The Council were entitled to reach their planning judgement on matters related to the case and so there has been no unreasonable behaviour in this regard.
8. The PPG identifies that failure to give the applicant proper explanation for delays in determining the application within the time limits is grounds for an award of costs. The application was submitted in July 2022 but was not determined until June 2023. Delays in the determination include waiting for Counsel opinion and delays in forming committee meetings following an election. This would have been frustrating for the applicant. However, there is evidence before me that the applicant agreed to an extension of time for the determination of the application during this period which is not disputed by the applicant.
9. If the applicant had concerns about the time taken to determine the planning application they could have appealed against non determination once the application exceeded the statutory decision time. That option was not exercised in this instance. On the evidence before me there is little to indicate that the delays directly led to wasted or unnecessary expense in pursuing the appeal.
10. The PPG identifies that not determining similar cases in a consistent manner may give rise to an award of costs. Whilst it may be the case that other applications have been supported by the Council, each case must be determined on its own merits. I do not have sufficient evidence before me that other cases quoted have such similarities that result in an unreasonable level of inconsistent decision making.
11. The PPG makes it clear that parties are required to behave reasonably in relation to procedural matters on the appeal, for example by complying with the requirements and deadlines of the appeal process.
12. The applicant has raised issue with the Council's conduct in the preparation of the Statement of Common Ground and the legal agreement. The Council failed to engage with the applicant in a timely way on both matters. Whilst I appreciate that planning departments are busy and often under resourced this does not excuse a lack of regard to progressing the appeal in a timely manner.
13. The Council's adoption of their own timetable for the submission of the Statement of Common Ground and legal agreement showed a lack of respect for the procedural deadlines established and agreed at the Case Management Conference and caused difficulties for all involved. Nevertheless, despite the delays in providing the Statement of Common Ground and legal agreement the Hearing was able to take place as scheduled. Whilst the applicant did undertake some work on a Unilateral Undertaking there would have been additional work on the matter in any event following discussions at the Hearing. Although there was a delay in the Council engaging in the process,

on the evidence before me there is little to demonstrate that it led to wasted or unnecessary expense on the part of the applicant. I am therefore unable to conclude that the Council acted unreasonably in this regard.

Conclusion

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has not been demonstrated and an award of costs is not justified.

K Ford

INSPECTOR