



Costs Decision

Hearing held on 6 December 2023

Site visit made on 8 December 2023

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2023

Costs application in relation to Appeal Ref: APP/K2420/W/23/3327377 Forest Hill Golf and Country Club, Markfield Lane, Botcheston, Leicestershire LE9 9FH

- 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 David Daniels and Neil Vitale (Sparsis Leisure Limited) for a full award of costs against Hinckley and Bosworth Borough Council.
 - The appeal was against the refusal of planning permission for proposed 98 bed hotel with leisure facility and spa (class C1).
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Decision

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

Procedural matter

2. The application for costs was made in writing with copies provided at the hearing. The appellants' representative made a minor verbal addition to the costs application at the hearing. I allowed time after the close of the hearing for the Council to respond to the application and for the appellants to submit final comments. All submissions have been considered in reaching my decision.

Reasons

3. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and so caused the costs applicant to incur unnecessary expense in the appeal process. The costs application does not refer to the PPG but it claims unreasonable behaviour by the Council in terms of (i) not agreeing to a statement of common ground (SOCG) in a timely manner, (ii) failing to cooperate by not assisting in the preparation of a legal agreement, (iii) requiring the appellants to enter into a highways contribution planning obligation which does not accord with the law or relevant national policy, (iv) introducing at a late stage information on the need for a highways contribution and objections over the appellants' landscape and visual impact assessment (LVIA), and (v) failing to provide consultation responses from the ecology officer and National Forest.
4. A draft SOCG was provided by the appellant with the appeal form on 7 August 2023. The starting date letter from the Planning Inspectorate dated 21 September 2023 identified the deadline date of 26 October 2023 for a completed SOCG to be submitted. The Council acknowledge that it did not respond to the draft SOCG until 23 October 2023 and so I can understand the appellants' worries over the significant delay. Nonetheless, a completed SOCG

was provided to the Planning Inspectorate by the deadline date and so I am satisfied the Council has not caused an unacceptable delay.

5. The evidence indicates the appellants intended to enter into a legal agreement at the time the appeal was lodged as a heads of term document was provided. The appellants contacted the Council via an email dated 8 November 2023 setting out the expected terms of an agreement and offering to draft the legal documents if necessary. The Council advised on the same day that it would be helpful if the appellants' representative could draft the proposed agreements. Given the appellants' offer, the lack of assistance from the Council appears justified and it does not demonstrate a lack of cooperation.
6. In my appeal decision, I have found the planning obligation that requires a highways contribution to be unnecessary. However, the issue as to whether it is required is largely a matter of planning judgment. The Council have relied upon evidence provided by Leicestershire County Council (LCC) as highway authority in support of its stance on the matter. Moreover, the completed SOCG indicates the appellants agree with the highways contribution. This should have been identified as a matter of disagreement in the SOCG if the appellants disputed its necessity. There is no evidence to indicate the appellants were forced to sign the SOCG as claimed. Within this context, I am satisfied the Council has not been unreasonable in seeking the highways contribution.
7. The Council's planning hearing statement accompanied by a landscape statement were submitted to the Planning Inspectorate by the deadline date of 26 October 2023. These were forwarded to the appellants' agent soon after. Therefore, the concerns raised over the LVIA were before the appellants in good time so as to enable an appropriate response at the hearing. The Council's decision notice on the application leading to the appeal clearly identifies its objections to the proposal on the grounds of adverse impacts on the character and appearance of the countryside. It is entitled to support its case in these regards by appointing a specialist consultant and identifying perceived shortcomings in the appellants' LVIA.
8. Along with the Council's hearing statement, LCC submitted its own statement of case. This includes an explanation of the concerns over highway capacity at the Field Head roundabout and Botcheston Road's junction with Desford Lane. It also states that a contribution towards the Coalville Transport Strategy would be necessary to mitigate the impacts of traffic generated by the proposal. Therefore, the appellants should have been aware of these issues well before the hearing.
9. On 21 November 2023, the Council submitted to the Planning Inspectorate further information from LCC on the justification for a highways contribution and the requested amount. This was submitted after the 26 October 2023 deadline. However, by that stage, the appellants had entered into and submitted the SOCG that states they agree to the highways contribution. Also, the lateness of the LCC's justification did not prevent the appellants from submitting draft unilateral undertakings prior to the hearing. As such, I fail to see how the late evidence from LCC has caused the appellants any unfairness or unnecessary expense.
10. There is little evidence before me to indicate the Council has withheld information from the appellants. LCC's ecology officer was consulted after the

appeal had been lodged and I am advised the appellants were informed of their response. The comments from the ecologist accord with the Council's concerns in respect of the effect of the proposal on great crested newts. There are claims the Council did not re-consult with the ecologist or National Forest following receipt of additional information and before the planning application was determined. If there has been any failure in these regards, it has not been shown how this has caused the appellants unnecessary expense during the appeal process.

11. For the above reasons, I conclude that the costs application fails to demonstrate unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG. Therefore, an award of costs is not justified.

Jonathan Edwards

INSPECTOR