



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 Leicestershire County 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 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 (LCC) 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 LCC in terms of (i) not agreeing to a statement of common ground (SOCG) in a timely manner, (ii) requiring the appellant to enter into a highways contribution planning obligation which does not accord with the law or relevant national policy, (iii) not cooperating with the appellants, (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. Section 6A of the Town and Country Planning (Hearings Procedure) (England) Rules 2000 only requires the local planning authority and the appellant to prepare a SOCG. There is no requirement for LCC as highway authority to be party to any SOCG and so I see no reason why it would have caused a delay in its preparation. In any event, as explained in my decision on the costs application against Hinckley and Bosworth Borough Council (HBBC), a completed SOCG was provided by the deadline and so there has been no unacceptable delay.

5. In my appeal decision, I have found the planning obligation that requires a highways contribution is unnecessary. However, this is largely a matter of planning judgment. LCC have provided evidence to support its claims over highway capacity issues and the SOCG indicates that 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. As such, LCC has not acted unreasonably in seeking the highways contribution.
6. It would seem from the evidence that letters submitted by the appellants' agent did not reach the LCC highways officer relevant to this appeal. As a result, LCC officers did not contribute to the drafting of the unilateral undertakings provided before the hearing. This is unfortunate but it does not constitute a deliberate failure of LCC officers to cooperate with the appellants' representatives. In any event, draft undertakings were prepared for those present at the hearing to consider. Since the hearing, a completed unilateral undertaking has been submitted and LCC officers have provided comments. This response demonstrates a level of cooperation.
7. There is clearly a difference of opinion between the appellants and LCC officers on highway related issues such as the number of trips that would be generated by the proposal. However, through their responses to consultations on the planning application and the appeal submissions, LCC officers have explained their views and why they are unconvinced by the appellants' assessments. This feedback provides evidence that LCC has cooperated with the appellants both before and after the Council's decision on the planning application.
8. LCC submitted its own appeal statement that explains its 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, further information from LCC was submitted to the Planning Inspectorate that sought to justify the proposed highways contribution. 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 submission did not prevent the appellants from providing draft unilateral undertakings before the hearing. As such, I fail to see how the late evidence from LCC has caused the appellants any unfairness or unnecessary expense.
10. HBBC commissioned and provided the statement criticising the LVIA and so LCC cannot be held responsible for the timing of its submission. Also, LCC is not the relevant planning authority and so it is not responsible for ensuring consultation responses are made available to the appellants.
11. For the above reasons, I conclude the 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