



Costs Decision

Site visit made on 16 November 2023

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd January 2024

**Costs application in relation to Appeal Ref: APP/Z1510/W/23/3317112
Land at Braintree Road, Great Bardfield, CM7 4FE**

Easting (x) 567962, Northing (y) 229885

- 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 Croudace Homes Limited for a partial award of costs against Braintree District Council.
 - The appeal was against a refusal to grant planning permission for the erection of 56 dwellings (Use Class C3) with associated works, including access; internal road network and associated highway works; hard and soft landscaping; formal and informal open space; vehicular, cyclist and pedestrian infrastructure; utilities and drainage infrastructure; car and cycle parking; and refuse storage.
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Decision

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

Reasons

2. The 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.
3. The PPG provides that local planning authorities (LPAs) are at risk of an award of costs if they behave unreasonably in relation to procedural matters at the appeal, for example by not complying with the requirements and deadlines of the process. Examples of unreasonable behaviour which may result in an award of costs include failing to notify the public of an inquiry or hearing, where this leads to the need for an adjournment.
4. The start letter dated 25 May 2023 set out the date and time for a hearing to take place on 12 September 2023 but not a venue. In an email dated 7 September 2023, the LPA confirmed to the Planning Inspectorate (PINS) that the first third-party notification letters that it sent out only confirmed that an appeal had been lodged and that it would be determined through the hearing procedure.
5. Even if some interested parties had become aware of the start letter and had a hearing date in mind, it is clear that the LPA did not seek to communicate these details to interested parties until its notification letter of 18 August 2023. Furthermore, it was not until then that the venue details were first publicised. Following concerns first raised on 5 September 2023 by Mr Gardner on behalf of Great Bardfield Parish Council (the PC), the LPA was not able to provide

- evidence to PINS that all interested parties had been sent a copy of its notification letter.
6. Therefore, there was not sufficient certainty that all those with an interest in the appeal would have been notified of full details of the hearing arrangements. There was not time to address this matter in line with the requirements of The Town and Country Planning (Hearings Procedure) (England) Rules 2000 (Hearings Procedure Rules) in advance of 12 September 2023. Therefore, had the hearing gone ahead on that date, this would have left any subsequent decision potentially open to challenge.
 7. With regards to the rearranged hearing date of 18 October 2023, following a concern raised by Mr Gardner on behalf of the PC on 10 October 2023, it came to light that some interested parties had not been notified. Indeed, the LPA accepts within its costs rebuttal that cross-referencing was not undertaken such that all parties that had shown an interest at the planning application stage were aware of the new hearing date.
 8. I have some sympathy with the LPA insofar as site notices were posted on this occasion. Therefore, steps were clearly taken to better publicise the October hearing date. However, the methods of notification prescribed in The Hearings Procedure Rules do not include this method of notification. Moreover, as cross-reference had not been undertaken, this again would have left any decision open to challenge had it later transpired that an interested party or parties had been deprived of the opportunity to participate at the hearing.
 9. The postponements of the hearings scheduled for September and October meant that no costs were incurred as a result of anyone turning up for events, only for them to be postponed on the day. The applicant has not disputed the LPA's point that there would have been no wasted costs associated with travel or accommodation. I also agree with the LPA that the postponements did not lead to a lengthy delay. This also meant that there were no material changes in circumstances that would have required the applicant to review or alter their case.
 10. The LPA cites 'genuine human error' and I accept no individual at the LPA sought to frustrate the hearings from going ahead. Nevertheless, I find that the LPA has acted unreasonably in failing to adequately notify the public of the hearing leading to two postponements. There would have been some preparation time and meetings between the applicant's team in anticipation of the postponed hearings. The applicant's representatives were also pulled into email discussions with the LPA and PINS regarding the postponements. A partial award of costs is justified on the basis of these specific matters.

Costs Order

11. 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 Braintree District Council shall pay to Croudace Homes Limited, the partial costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in email discussions regarding the hearing postponements and preparation time and meetings between the applicant's representatives held in anticipation of the postponed hearings; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to Braintree 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.

M Russell

INSPECTOR