



Costs Decision

Site visit made on 15 January 2024

by Chris Couper BA (Hons) DiP TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14.02.2024

Costs application in relation to Appeal Ref: APP/J0350/W/23/3323648 The Myrke, Datchet, Slough SL3 9AB

- 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 Slough Borough Council for a full award of costs against Mr Malwinder Panesar.
 - The appeal was against the refusal of planning permission for the erection of two new three bedroom dwelling houses.
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Decision

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

Reasons

2. The Planning Practice Guidance ('PPG') states that the parties in planning appeals normally meet their own expenses. The aim of the costs regime is, amongst other things, to encourage all those involved to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case.
3. It 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. An award of costs may result from either procedural or substantive matters.
4. The PPG states that where a party has made a written application for costs, clearly setting out the basis for the claim in advance, their case will be strengthened if the opposing party is unable to, or does not offer evidence to counter the case. In this instance, there has been no response from the defendant to the Council's application.
5. At ID: 16-052-20140306 the PPG provides examples of types of behaviour that may give rise to a procedural award of costs against an appellant. They include delay in providing information or other failure to adhere to deadlines; only supplying relevant information at appeal when it was requested, but not provided, at application stage; and introducing fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen.
6. The Council sets out that the appeal was lodged on 6 June 2023, but states that the appellant only provided the Council with his grounds of appeal and

associated documents on 4 December 2023. This is contrary to paragraphs 5.7, 9.4.1 and 9.4.2 of the Planning Inspectorate Procedural Guide: Planning Appeals – England 2024 (and its predecessor), and Part M of the appeal form, which are clear that appellants must send a copy of the appeal form and supporting documents to the Council when it is submitted to The Planning Inspectorate.

7. However, whilst such behaviour is clearly unreasonable, and it has significantly impacted the time available to the Council to prepare its case, it has not been clearly demonstrated that this has resulted in the Council incurring unnecessary or wasted expense in the appeal process.
8. Turning to the submission of a flood risk assessment at appeal stage, the Council acknowledges that it did not request this information during its consideration of the planning application, given other concerns that it had with the scheme. However, not long before submitting the application the subject of the appeal, the appellant's agent sought pre-application advice for an alternative residential scheme on the same site.
9. In its detailed advice letter dated 30 May 2022 (and provided at Appendix 1 of its Costs Claim), the Council set out that as the site is located within flood zone 2 and the proposal would introduce a 'more vulnerable' use to it, a planning application would require a site specific flood risk assessment, including a sequential test. It continued that 'this is a significant matter that will contribute to establishing the principle of development at the site and it may result in design influence as well'. Despite that clear advice, the planning application was not accompanied by a flood risk assessment.
10. The National Planning Policy Framework encourages early engagement and front-loading to improve the efficiency and effectiveness of the planning application system for all parties. It sets out that submitting the right information is crucial to good decision making. In that context, the appellant should have been aware that a flood risk assessment was required, and nowhere in his planning application did he seek to justify why it was not provided. This amounts to unreasonable behaviour.
11. At paragraph 6.40 of its appeal statement the Council states that due to the very late receipt of the flood risk assessment on 4 December 2023, it has not had time to consult on it. Nevertheless, it points out what it considers to be its flaws. In its assessment of that document, which should have been provided at application stage, the Council has incurred unnecessary expense in the appeal process.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

13. 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 Mr Malwinder Panesar shall pay to Slough Borough Council, the costs of the appeal proceedings described in the heading of this decision, limited to those

costs incurred in assessing the submitted flood risk assessment; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicant is now invited to submit to Mr Malwinder Panesar, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Chris Couper

INSPECTOR