



Costs Decision

Hearing held on 19 December 2023

Site visit made on 19 December 2023

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th February 2024

Costs application in relation to Appeal Ref A: APP/D3640/W/22/3300731 Central Garage, Bagshot Road, Chobham, Surrey GU24 8BS

- 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 East Street Homes (UK) Ltd for a partial award of costs against the Environment Agency.
- The appeal was against the refusal of planning permission for a development described as the "demolition of existing garage structures and change of use to Class C3 (dwellings) to provide 5no. 3-bed houses with associated parking and landscaping".

Costs application in relation to Appeal Ref B: APP/D3640/W/22/3311833 Crown Motors, Bagshot Road, Chobham, Surrey GU24 8BS

- 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 East Street Homes (UK) Ltd for a partial award of costs against the Environment Agency.
- The appeal was against the refusal of planning permission for a development described as the "demolition of existing garage structures and change of use to Class C3 (dwellings) to provide 4 no. three bedroom houses with associated parking and landscaping".

Decision

1. Appeal A: The application for an award of costs is refused.
2. Appeal B: The application for an award of costs is refused.

Reasons

3. National Planning Practice Guidance (the Guidance) advises that costs may only 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 appeals process. The Guidance further sets out that parties in planning appeals and other planning proceedings normally meet their own expenses and an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. The Guidance also makes it clear that costs applications may relate to events before the appeal was brought¹.
4. The Guidance states that Local planning authorities, appellants and interested parties who have taken part in the process, including statutory consultees, may apply for costs, or have costs awarded against them². In this instance, the applicant has sought costs against the Environment Agency (EA).

¹ Paragraph: 032 Reference ID: 16-032-20140306

² Paragraph 029 Reference ID:16-029-20140306

5. The applicant states that the EA's request for additional data in respect of flood modelling and its inconsistency in terms of the requests for additional data has resulted in delays to the appeal process and unnecessary costs. Moreover, the EA also consistently refused to review data which resulted in the applicant seeking an independent review of the modelling. When the EA finally agreed to review the data, it asked for information not previously requested. Therefore, the applicant requests a partial award of costs for the additional and unnecessary modelling and the delays leading to two postponements and a 6-month delay.
6. The hearing for the developments was first scheduled to sit on 18 July 2023 which was postponed until 26 September 2023 and finally sat on 19 December 2023. During these periods the applicant was made aware that the EA required additional time to consider the modelling data, which could take up to 12 weeks. I emailed the parties on 23 June 2023 that, as the EA is a statutory consultee on development within Flood Zone 2 and 3, and that the matter relating to flooding at the site is serious, it would be prudent to delay the hearing to allow the EA additional time to consider new data. Although not keen to delay the hearing, the applicant nonetheless agreed to postpone the hearing from 18 July 2023 to the 26 September 2023.
7. During the initial postponement period, the applicant emailed the Inspectorate on 18 September 2023 stating that given outstanding matters yet to be resolved with the EA, *"it does not seem sensible to proceed with the hearing"* on 26 September 2023. I agreed with the applicant on this matter. However, due to other commitments, I could not provide a date to sit until December 2023 at the earliest. The parties agreed and a new date of 19 December 2023 was agreed, and the hearing took place on that date.
8. Therefore, one can see that although there were delays caused by the EA failing to consider new evidence in a timely manner, the applicant was made aware of the issues that the EA was having in considering new modelling data and in fact requested a delay to the September hearing. On that basis, I do not consider that the EA acted unreasonably in delaying the hearing dates.
9. The applicant also argues that the EA has been provided with sufficient information to demonstrate the appeal site is not within Flood Zone 3b. Whilst I appreciate the frustration caused by the delays and indeed the length of time for the EA has taken to consider new data supplied by the applicant, its position has remained the same that the site lies within Flood Zone 3b. The EA reiterated this point when it emailed the applicant on 15 December 2023 and when giving evidence during the hearing.

Conclusion

10. Thus, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated by the applicant. Consequently, an award of costs is not justified.

Graham Wyatt

INSPECTOR