



Costs Decision

Hearing (Virtual) held on 27 February 2024

Site visit made on 28 February 2024

by H Miles BA(hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2023

Costs application in relation to Appeal Ref: APP/U2235/W/23/3331817 Forsham House, Forsham Lane, Sutton Valence, Kent ME17 3EW

- 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 Cloverdown Ltd for a partial award of costs against Maidstone Borough Council.
 - The appeal was against the refusal of planning permission for a care village comprising an 87 bed care home and 12 assisted living apartments with doctors' consulting room, car parking, landscaping and associated development
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Decision

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

The submissions for Cloverdown Ltd

2. The costs application was submitted in writing. The final comments were made orally. Details of the oral submission is set out in the Annexe at the end of this decision.

The response by Maidstone Borough Council

3. The response was made in writing.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, 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.
5. The substantive points in the appellant's case are that there has been a delay to providing information and failure to adhere to deadlines for the submission of the planning obligation and planning conditions and failing to agree a statement of common ground in a timely manner.
6. The procedural guide sets out that, for hearings an agreed statement of common ground (SOCG) and the LPA's full statement of case should be received within 5 weeks from the start date. This was clarified in the start letter with a date of 6th December 2023. The guidance states that both the Appellant's and LPA's statement of case should suggest any conditions which it would be prepared to accept and provide the reasons for suggesting these. A draft planning obligation should be received no later than 10 working days before the hearing.

7. The pre hearing note set out that, as they had not been received in line with the deadlines, an agreed list of conditions which should be included in an agreed SOCG and a final draft of any planning obligation should be submitted no later than 13th February. These were not received on time and PINS sent a further request for these documents by 23rd February. PINS received a SOCG and list of conditions on 23rd February, the reasons for conditions were submitted at the event on 28th February, and a draft planning obligation which included the LPA's requested heads of terms was submitted on 26th February.
8. It appears that the first engagement with the appellant from the LPA on these matters was on 8th February with regard to the SOCG, 15th February with regard to the heads of terms for the Planning Obligation and 23rd February with regard to the conditions.
9. With regard to the SOCG I understand progress had been made by 14th February although a version signed off by both parties was not available. In respect of the planning obligation there was also a delay on the part of the appellant to provide details of their legal team, however this has not appeared to prevent discussions regarding the planning obligation as emails regarding heads of terms were exchanged during this time. I understand that this timing was in part due to the case officer's absence both for planned and unplanned leave. However, the timescales were made clear when the appeal was started and the late engagement from the LPA, even relative to the extended deadlines, is unreasonable and has been unhelpful to all parties in the timely preparation for this event.
10. Therefore, the LPA's behaviour has resulted in a delay to providing information and failure to adhere to deadlines for the submission of the planning obligation and planning conditions and failing to agree a statement of common ground in a timely manner. This is unreasonable behaviour as set out in the PPG.
11. This has clearly resulted in the appellant having to undertake work in a short timescale and piecemeal fashion which is inconvenient. However, this was not significant additional work over and above that which would be required had these deadlines been met. Furthermore, these matters were resolved to the point that the hearing could proceed without the need for significant adjournment and so it did not disrupt the appeal timetable. Therefore, although unreasonable behaviour has been demonstrated, in this case it has not led to unnecessary or wasted expense in the appeal process.
12. Nevertheless, the lateness of the submission of these documents was unhelpful and the LPA is reminded of the importance of sticking to the timetable for appeals to proceed quickly and fairly.
13. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

H Miles

INSPECTOR

Annexe: Submission made orally at the hearing

Final comments for Cloverdown Ltd

The first point is that the appellant, as it said, has failed to particularise the expenses to which it has been put as a result of the council behaviour. And the point can be answered very simply, the additional effort in chasing up information that is simply not forthcoming or it is, in the case of the S106 agreement, the additional expense of having to pay an expert solicitor to come in at very short notice. Further, it is the expense of dealing with things in a piecemeal fashion because for example in relation to the S106 heads of terms are given incrementally rather than in one comprehensive email and often at the very last minute. The second point is, I think it's said that, the complaint about the SOCG comes to nothing because there was a version capable of being signed of the 14th. Of course, it wouldn't be proper for the appellant to send a working document to you without a direction from you or agreement from the LPA that that was appropriate. You gave your direction by way of email and that is ultimately why we provided you with the incomplete but latest travelling version before the Friday deadline. Finally, the appellant has every sympathy for Mr Scott's personal circumstances and we hope that he has recovered. The council is an institute and as an institution has the capacity to delegate workload internally and dedicate appropriate resource to matters as important as planning appeals.

Finally, it won't have escaped your attention that in the S106 some information was still absent namely triggers and the mechanisms behind some of the contributions. This must be the situation that the PPG contemplates because of course, the logic of the appeal process and the procedural guidance is that you should be provided with as near to complete as possible drafts well in advance of any appeal, and there should not need to be further consultation with lawyers about points such as triggers after the close of the inquiry, and this we say is an indication of unreasonableness and a failure to prioritise this appeal.