



Costs Decision

Hearing held on 6 & 22 February 2024

Site visit made on 6 February 2024

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th May 2024

**Costs application in relation to Appeal Ref: APP/C3105/W/23/3326858
Land to the north of Burycroft Road, Hook Norton, Oxfordshire
Ordnance Survey Grid Reference 435413:232851**

- 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 Mr and Mrs Paul Reynolds for a full award of costs against Cherwell District Council.
 - The appeal was against the refusal of planning permission for erection of a single detached dwelling, associated garage, access and new landscaping.
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Decision

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

Reasons

2. 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.
3. The appellant indicated an intention to apply for an award of costs on the first day of the Hearing and the application was submitted in writing before the Hearing closed. Therefore, the application was not out of time. The Council has had an opportunity to respond, and I have taken their comments into account.
4. The application does not specify whether it is for a full or partial award of costs, so I have referred to a full award in the banner heading above. However, the application relates to the Council's behaviour during the latter stages of preparation for the Hearing, so I have focussed on the extent to which any unreasonable behaviour leading to unnecessary or wasted expense occurred during that period.
5. The PPG provides examples of unreasonable behaviour by Local Planning Authorities, which include delay in providing information or other failure to adhere to deadlines and not agreeing a statement of common ground in a timely manner. The appellant highlights examples of the Council missing deadlines set for the submission of evidence. This notably included the Council's response to matters raised by me in a Pre-Hearing Note (PHN) and finalisation of the Statement of Common Ground (SoCG).
6. The Council accepts that missing deadlines could be seen as unreasonable, while highlighting extenuating circumstances arising from a particularly large volume of appeal casework and consequent pressure on limited resources. Although there is some indication that cases being considered through the

Public Inquiry procedure were being given priority at the expense of this appeal, I have no reason to doubt that the officers concerned made every effort to provide the required evidence. Nevertheless, the PHN had been issued well in advance of the Hearing, giving a reasonable deadline for responses, so as to facilitate Hearing preparation by all concerned. Against that background, receipt of the Council's rather detailed response only two working days before the Hearing was unreasonable.

7. The appellant describes having had to re-prioritise and re-schedule other work, so as to devote resources to digesting the Council's late evidence rapidly before the Hearing. Additional staff were deployed, and the appellant's team would have been under some pressure at this point. Had the Council's PHN response been available earlier, this work could have been completed at the originally scheduled time, potentially involving fewer members of staff. However, the time and resources required to understand and respond to the points raised would have been substantially the same. Therefore, it has not been clearly established that additional cost was incurred as a result of the short timeframe.
8. Although the SoCG was also finalised at a late stage, there is no clear evidence that abortive work was undertaken in the meantime. The lists of matters agreed and disagreed evolved between the draft and final versions, but not to an extent that the issues requiring discussion at the Hearing were reduced. Therefore, even if the SoCG had been finalised earlier, a similar level of preparation would have been required.
9. The Council's evidence included a legal opinion which had been received after business hours on 30 January but was not submitted until 5 February, the day before the Hearing. The advice in question had been sought by the Council in connection with a different appeal. I accept that a short period of reflection would have been required to digest the contents and decide whether it was relevant to other ongoing appeals. Nevertheless, since it related to a specific point which the appellant had already raised, it was clearly of relevance to this appeal. As such, a quicker turnaround could reasonably have been expected in this case. However, the amount of time needed for the appellant to respond would have been much the same if the document had been available slightly earlier and therefore there is no evidence that abortive costs were incurred.
10. Since the legal opinion in question clearly references an earlier legal opinion on the same point, which took a conflicting view, the existence of this alternative legal opinion was not concealed. Therefore, it was not unreasonable for the Council to submit only the later opinion.
11. The Council's response to my request for a written breakdown of housing delivery at RAF Upper Heyford was also submitted after the set deadline. The appellant furthermore considers that the contents were misleading. I agree that the scope of this breakdown was wider than expected, but it did assist me in understanding the phasing of development at that site, which was relevant to deliverability evidence submitted by both parties. The appellant was able to respond appropriately, and I was able to have regard to that response. There is no substantive evidence that abortive costs were incurred as a result of the information included by the Council.
12. Both parties had made me aware at an early stage of resourcing issues arising from the number of ongoing appeals and availability of housing land supply experts. For that reason, an opportunity was provided for a later Hearing date

to be scheduled by mutual agreement. Had an alternative date been agreed, this may have mitigated the circumstances leading to submission of late evidence. However, no agreed date was forthcoming, and the Hearing was confirmed for the date originally proposed. This was not the Council's decision, so there was no unreasonable behaviour on their part in this respect.

Conclusion

13. For the reasons set out above, whilst I have found that the Council exhibited unreasonable behaviour with regard to delays in providing certain information and adhering to deadlines, I find that wasted or unnecessary expense has not been demonstrated as a result. I conclude therefore, that the application for an award of costs should be refused.

Jane Smith

INSPECTOR