
Costs Decision

Inquiry Held on 16-19 January 2024

Site visit made on 19 January 2024

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 May 2024

Costs application in relation to Appeal Ref: APP/J1535/C/21/3279021 Land at Homefield Nursery, Meadgate Road, Nazeing, Essex EN9 2PB

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Messrs Brien, O'Brien and Connors for a partial award of costs against Epping Forest District Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the stationing of caravans for residential purposes to create 6 pitches, laying of hard core, laying out of new access and erection of boundary treatments.
-

Decision

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

The submissions for Messrs Brien, O'Brien and Connors

2. The application is made on procedural grounds due to the late withdrawal of one of the reasons for issuing the enforcement notice, which related to flooding. The Council advised the applicants on 14 December 2023 that this matter was no longer being pursued. This was less than a week from the exchange date for the Proofs of Evidence (POE). This was unreasonable behaviour that resulted in wasted expense in the appeal.

The response by Epping Forest District Council

3. The Council did advise the applicants on 14 December 2023 that the flooding reason could be dealt with by condition. However, the applicants have failed to demonstrate that any work was completed by their flooding consultant, Mr Quigg, before this date, which led to the claim for wasted expense. The applicants' planning consultant, Mr Woods, emailed the Council on 12 December 2023 to say that Mr Quigg was awaiting modelling information. During cross examination, Mr Woods was asked specifically what work had been carried out by Mr Quigg prior to 14 December 2023 but Mr Woods did not answer the question.
4. He did state that Mr Quigg was a new appointment as the consultant who had prepared the Flood Risk Assessment (FRA) accompanying the planning application was not available for the inquiry. He also stated that Mr Quigg was not necessarily updating the FRA but was providing a Proof of Evidence.

Reasons

5. The Planning Practice Guidance (the Guidance) advises that costs may only be awarded against the party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense or wasted expense in the appeal process.
6. The Council's 14 December 2023 email must have come as a surprise to the applicants, especially as it was so late in the day. However, the parties are expected to keep their cases under review at all times during the appeal and whilst it was late, it did save inquiry time.
7. The application for a partial award of costs was initially and briefly set out in Mr Woods' POE. Before I carried out the site visit and heard closing submissions from the parties, I made it clear that I wished to hear the costs application in full after hearing closings. I regarded Mr Woods's statement on the costs application to be flagging the issue for later, when I would hear all the details and also hear the Council's response.
8. Before this though Mr Woods was asked about the costs application during evidence in chief, when I noted his response on the appointment of new consultants (Mr Quigg). He was asked again about the costs application during cross examination and I listened very carefully when he was asked directly what work Mr Quigg had carried out before 14 December 2023. My note records that Mr Woods did not answer directly but said he was "not talking costs now" and that he should "not be asked about it".
9. I was therefore expecting full details to be provided after hearing closing submissions. Although it was stated that research and modelling had taken place as part of preparations, no specific details were provided and this is inconsistent with the email sent 12 December 2023 from Mr Woods' office. The applicants have not provided a copy of this email so I only have the Council's summary of it that Mr Quigg was awaiting modelling information. Therefore, some work may have been done and it was also stated that "50% of the work" had been done but I find this was not substantiated in any way in the costs application and "50%" appeared to be a random figure selected with no basis.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

D Fleming

INSPECTOR