



Costs Decision

Hearing held on 8 February and 23 April 2024

Site visit made on 8 February

by Anne Jordan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2024

Costs application in relation to Appeal Ref: APP/D2320/W/23/3329702 Land at Babylon Lane Heath Charnock, Adlington, Chorley, PR6 9NP

- The application is made under the Town and Country Planning Act 1990, sections 78, against Chorley Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for 40 dwellings, with associated new access, replacement of brass band building and associated parking, landscaping reserved, on land at Babylon Lane, Adlington, Chorley.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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. The appellants made two costs applications which I deal with in turn below.

The First Costs Application

3. The appellant has made two applications for planning permission at the appeal site. The first, ref 21/00270/FULMAJ was made in 2021 and the second, ref 23/00510/OUTMAJ was made on the 15th June 2023 and is the scheme before me. Although the schemes are largely the same, landscaping is a reserved matter for the second scheme. The first application remains undetermined. An appeal was lodged on the second application on the 18th September 2023, a few days after the statutory period for determination.
4. The appellant's case rests largely on the Council's conduct in relation to the determination of the first application. I note that without an agreement from the Council to agree an extension to the period for determination the appellant cannot currently appeal the first application, as the period for doing so is time-limited. Furthermore, it would appear that progress in determining the first application has stalled. It is the appellant's view that their only option to progress the site was to progress the site at appeal and had the Council determined the first application within a reasonable period the second application would not have been necessary.
5. Whilst I understand the appellant's frustration, the first application and the Council's conduct in relation to it, is not before me. I am able to consider only the merits of the second application, the appeal relating to it, and the Council's conduct in relation to it. I can also consider only the costs relating to the

appeal, not the application. In relation to the second planning application the Council had only exceeded the statutory time period for determination by a matter of days. This is not, in itself unreasonable.

6. I have considered whether there is any weight to the appellant's argument that the second application which led to the appeal should not have been necessary. However, here I am conscious that the two applications are not identical. Even without full details of the first application I am aware that in the second landscape is a reserved matter and in relation to flood risk, a new flood risk assessment has been supplied. In this regard I have not, in effect, been considering the same scheme.
7. In these circumstances I can therefore find no merit in the appellant's first costs application.

The Second Application

8. Following the initial hearing and before the issue of the decision notice the Council contacted the Inspectorate to advise that a large number of letters advising local residents of the appeal hearing had not been delivered. This matter had only just been brought to their attention. It followed the cancellation of the originally arranged hearing and its postponement by two weeks due to a failure of the Council to publish relevant appeal documentation. In the interests of fairness, I took the decision that local residents should be provided with an opportunity to speak, and if they chose, to ask questions of the appellant. This hearing took place on the 23rd of April.
9. I am advised that the error in consultation was due to problems with the company the Council had chosen to print and secure delivery of some of its correspondence, including notifications in relation to planning matters. The Council were evidently not aware of the problems during the first hearing as I was advised they were satisfied with the consultation arrangements during the first hearing session. There was clearly no intent to be disruptive in the Council's actions. Nevertheless, the question arises as to whether the failure to deliver the post was unreasonable.
10. Although the failure was not a deliberate act, it nonetheless arose because of the failure of the Council to ensure that the consultation exercise was being carried out. This matter should have been within the Council's control, as the company is contracted to carry out a service on behalf of the Council and their failure to do so and the repercussions arising are therefore ultimately the responsibility of the Council. The consequence of the failure to secure delivery of the relevant mail was a potential unfairness in relation to consultation, and the resulting need to hold an additional hearing session.
11. Whilst all agree that the matter was unfortunate, in the normal course of events it should clearly have been avoided and amounted to unreasonable behaviour. It also resulted in all those who attended the first event needing to attend a second event, which will have incurred additional expense. A costs award in relation to the second hearing is therefore justified.

Costs Order

12. 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 Chorley Council shall pay to Adlington Land Limited the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing for and attending the second hearing session of the 23 April 2024, such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Chorley Council, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Anne Jordan

INSPECTOR