



Costs Decision

Inquiry held on 8 November 2023 and 10-12 and 16-18 January 2024

Site visit made on 10 January 2024

by M Hayden BSc (Hons), Dip TP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd July 2024

Costs application in relation to Appeal Ref: APP/Q3305/W/23/3314693 Former Greencore Factory, Prestleigh Road, Evercreech, BA4 6JZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by West Estates Development Limited for a partial award of costs against Somerset Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for an application for outline planning permission (with all matters reserved except access, appearance, layout and scale) for the demolition of all existing buildings and equipment other than Kemps Mill which will be retained as flexible Class E/F2 floorspace and erection of 118 no. residential dwellings and a shop (falling in use class E), together with open space, vehicular and pedestrian accesses, landscaping and related infrastructure and engineering works'.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) states that costs may be awarded against a party at appeal, where that party has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Claims can be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.
3. The appellant's claim is procedural and, in summary, is made on the following basis:
 - (a). The Council failed to notify all statutory consultees of the Inquiry, which was due to open on 8 November 2023, and this resulted in the Inquiry being adjourned to enable the correct notifications to be issued.
 - (b). As a result the appellant incurred substantial costs, in the form of professional fees, travel and other expenses, for their team to attend the first day of the Inquiry on 8 November 2023, which proved abortive as no business was conducted on that day, other than to address the adjournment.
 - (c). The unnecessary and wasted expense is a direct result of the Council's failure to notify the relevant parties of the Inquiry, and those actions fall squarely within an example provided by the PPG of unreasonable behaviour warranting the award of costs against a local planning authority (LPA).
4. In reply, the Council has acknowledged that it failed to notify all statutory consultees of the arrangements for the Inquiry to open on 8 November 2023, and

confirmed that this was a result of an administrative error. The Council does not dispute that its failure to notify was unreasonable behaviour warranting an award of costs against the LPA, nor that costs may have been incurred which might otherwise not have been, justifying a partial award of costs. The Council does not seek to comment on whether any costs incurred were abortive or substantial.

5. This principle of this claim is not in dispute between the parties. The Council did fail to notify all the statutory consultees of the date, time and place of the Inquiry due to open on 8 November 2023. Whilst several of the consultees who were not notified, confirmed in writing that their interests were not prejudiced, the Royal United Hospitals NHS Foundation Trust made clear that not being given the proper notice prejudiced their ability to participate in the Inquiry proceedings. The only fair and safe course of action open to me was to adjourn the Inquiry to enable the correct notification to take place.
6. The PPG lists a failure to notify the public of an inquiry, where this leads to a need for adjournment, as an example of unreasonable behaviour on the part of an LPA¹. The Council's failure to notify statutory bodies in this case, clearly amounts to the same type of unreasonable behaviour, and resulted in the need to adjourn the Inquiry.
7. As a result of the adjournment, none of the evidence scheduled to be heard on the first day of the Inquiry could be heard on 8 November 2023. The opening day of the Inquiry had to be rearranged for 10 January 2024, and all of the matters intended to be heard on 8 November 2023, had to be rescheduled to be heard on 10 January 2024. Consequently, the time and cost incurred by the appellant's team in attending the opening day on 8 November 2023 was abortive, and amounts to unnecessary and wasted expense.
8. In terms of whether the costs incurred by the appellant were 'substantial', the PPG is clear that I may only address the principle of whether costs should be awarded, not the amount, which is to be settled between the parties². However, the Inquiry programme for 8 November 2023, which was published in advance, clearly sets out the matters which were scheduled to be heard on the opening day. This should provide a guide as to who needed to be in attendance on 8 November 2023 and a basis for settling the amount of the partial award.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

10. 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 Somerset Council shall pay to West Estates Development Limited, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in attending and resourcing the Inquiry on 8 November 2023; such costs to be assessed in the Senior Courts Costs Office if not agreed.

¹ PPG Paragraph: 047 Reference ID: 16-047-20140306

² PPG Paragraph: 044 Reference ID: 16-044-20140306

11. The applicant is now invited to submit to Somerset Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Hayden

INSPECTOR