

Costs Decision

Site visit made on 27 March 2024

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2024

**Costs application in relation to Appeal Ref: APP/P1425/W/23/3330879
Chagley Corner, Land West of Oxbottom Lane, Station Road, Newick
BN8 4PJ (Grid Reference - Easting: 540573, Northing: 120916)**

- 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 Reside Developments Ltd for a full award of costs against Lewes District Council.
 - The appeal was against the refusal of planning permission for the redevelopment of the site to provide 21 residential dwellings along with parking, open space and all necessary infrastructure.
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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 applicant has applied for a full award of costs that broadly relates to both procedural and substantive grounds, namely, delays in the Council making its decision; failing to substantiate the reasons for refusal; and the introduction of new issues from the Council and the Local Lead Flood Authority (LLFA) that required rebuttal.
4. The application was considered by the Council three times with a recommendation to approve in each case. The first Committee meeting was not properly constituted and at the second meeting the application was deferred due to drainage issues.
5. I have no doubt that the delays involved in obtaining a decision from the Council were unfortunate and frustrating for the applicant. However, procedures and processes adopted by a Planning Committee for determining planning applications are generally a matter for the authority within the context of local government accountability.
6. I am not aware if the applicant pursued the matter of how the Committee was constituted via the Council's formal complaints procedure or whether this has since been pursued with the Ombudsman. However, any potential matters of maladministration are indeed best addressed through those routes rather than through me.

7. With regard to the issue of flood risk, the LLFA sought to have a further condition introduced as a result of the revised details. To my mind, this suggests that the delay to consider the details was necessary and in such circumstances was not unreasonable.
8. Whilst the eventual decision taken by the Planning Committee was contrary to the advice of Officers, it was the right of the Planning Committee to make this decision and refuse the planning application. The reason for refusal refers to the location of the site being outside of a settlement and the harm that would be caused to the landscape.
9. These concerns were reasonably straightforward and easy to understand. Indeed, I too concluded that the site was outside of a settlement. The Council's Statement may not have been supported by professional landscape evidence and it was limited in its discussion of the landscape issue, but that does not in itself invalidate the concerns that were raised.
10. I noted that there would be some effect resulting from the development, but in my planning judgement I concluded that it would not be harmful to the area or contrary to the development plan. However, I see nothing unreasonable in the Committee placing greater weight than either myself or their Officers on the effects of the development on the landscape.
11. It is not unusual for points to be raised within a party's case that touch upon a matter related to, but not directly referred to in the reason for refusal. For example, the Appellant's Statement, in drawing attention to compliance with the criteria in the Interim Policy Statement for Housing Delivery (IPS), touches upon various issues, including density, that were not directly referred to in the reason for refusal.
12. The Council similarly references the IPS in its Statement. Whilst the Council considers in more detail the issue of density, that issue does play some role in how the development as a whole would be perceived given the site's context. To my mind, this does not appear as an attempt to evolve the reason for refusal or to introduce an additional reason.
13. In response, the Appellant's final comments contain a short section specifically on density. However, much of this is taken up with quotes from the various appeal statements and documents. Of the other additional matters said to have been raised in the Council's Statement, the Appellant's Final Comments also contain brief references to the previous refusal on site but there is little reference to either transport or sustainability matters.
14. Overall, it appears to me that, in reality, there has been so little extra work involved in responding on these points that it can be regarded as de minimis. In effect these points have quickly and easily been rebutted without wasting expenditure. As such it does not constitute valid grounds for an award of costs.
15. Finally, with regard to the role of the LLFA and issues of drainage, it appears that prior to the appeal being submitted there were no outstanding drainage issues, and the matter was seemingly capable of being dealt with by condition. At the appeal stage the LLFA identified a number of concerns and 'objected'. In their submission, the LLFA did however, suggest possible conditions to address their concerns were the scheme to be permitted.

16. The LLFA's comments were in response to revisions to the drainage design that had come forward at the appeal stage. The Appellant's final comments acknowledge that the updated drainage strategy was an evolution of the design following a more detailed assessment.
17. It is not unusual for such technical matters to evolve during the course of a scheme's progress, without the nature of the development as a whole changing. It is similarly reasonable for the technical consultees to respond to these changes, particularly if the changes raise concerns.
18. In this case, although the LLFA may have preferred matters to be resolved prior to a decision, it put forward suggested conditions that would have enabled its concerns to be dealt with post-decision. It therefore seems to me that whilst it would have been possible to deal with the matter through conditions, discussions between the various drainage experts on the finer points of these changes would have been necessary at some point. That these matters were addressed prior to the outcome of the appeal does not make the actions of the LLFA in highlighting their concerns unreasonable nor the work undertaken to resolve matters ahead of any decision unnecessary or wasted.
19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. It follows that an award of costs is not justified.

Stewart Glassar

INSPECTOR