



Costs Decision

Hearing held on 11 and 12 March 2024

Site visit made on 12 March 2024

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2024

Costs application in relation to Appeal Ref: APP/Z1510/W/23/3331319 Towerlands, Panfield Road, Braintree, Essex, CM7 5BJ

- 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 Unex (No. 10) Limited for an award of costs against Essex County Council.
 - The appeal was against the failure of Braintree District Council to issue a notice of its decision within the prescribed period on an application for planning permission for a development described as: Erection of up to 150 dwellings with access to be considered.
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Decision

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

Preliminary Matters

2. The appeal was made against the non-determination of a planning application for residential development submitted to Braintree District Council as the Local Planning Authority. Essex County Council are the Highway Authority for the area. Due to the nature of the proposed development, the Local Planning Authority were required to consult the Highway Authority under the terms of Article 18 of The Town and Country Planning (Development Management Procedure) (England) Order 2015. As a result of the consultation, the Highway Authority raised an objection to the planning application on the grounds that the Transport Assessment that accompanied the application contained insufficient information to enable it to establish the likely impact of the proposal on highway capacity and safety.
 3. Whilst the main parties were preparing their submissions for the hearing, the appellant sought to agree a statement of common ground with the Highway Authority on various matters. A highways statement of common ground was agreed on 16 February 2024 and submitted to the Planning Inspectorate (PINS). This was a separate document from the main statement of common ground agreed between Braintree District Council, as the Local Planning Authority, and the appellant. The main statement of common ground was agreed on 9 February 2024.
 4. On 20 February 2024 the Highway Authority contacted PINS and the appellant to advise that it was necessary to amend the submitted highways statement of common ground. The appellant declined to agree to amend the statement.
 5. On 26 February 2024 the Highway Authority submitted a position statement to PINS and the appellant setting out why it no longer agreed with one point in
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the highways statement of common ground. This point related to a proposed obligation to be included in a Section 106 Agreement should the appeal be allowed. The point was regarding a contribution towards public transport, cycling, and walking in the event that a link road on third party land was not available for use at the time when the first unit of the proposed development was ready to be occupied. The appellant subsequently submitted a Unilateral Undertaking which contained this obligation.

6. A representative of the Highway Authority attended the hearing and gave evidence in respect of highways matters as part of the Local Planning Authority's witness team.

The submissions for Unex (No. 10) Limited

7. The costs application was made orally at the hearing.
8. It was unreasonable for the Highway Authority to agree a statement of common ground on the link road only to depart from this without any explanation of its change of position.
9. To raise this at a late stage was unreasonable and has resulted in unnecessary or wasted expense to address this at the hearing.

The response by Essex County Council

10. The response was made orally at the hearing.
11. The highways statement of common ground fulfils its purposes. It deals with various matters in sections. All of the other sections remained of utility to the hearing.
12. The Highway Authority's change of position was communicated quickly and dealt with a single discrete point. This point was one which it would have been necessary to deal with in any event.
13. It is not unreasonable to change a position and promptly communicate that. It might have been unreasonable to wait until the hearing to do so. The appellant was able to address the question at the hearing and the Highway Authority acted responsibly in the circumstances.
14. The appellant's application does not identify any part of the costs guidance that identifies this as unreasonable.

Reasons

15. 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.
16. The Highway Authority was not a principal party to the appeal. It was acting in its role as a statutory consultee. The PPG sets out that where a local planning authority has placed significant weight on the view of a statutory consultee in its reasons for refusal, the local planning authority may request the statutory consultee attends a hearing, or makes written representations, to defend its position as an interested party. Whilst this appeal was against non-determination, the Council cited highways grounds in its putative reasons for the deemed refusal of planning permission.

17. The PPG also sets out that where a statutory consultee exercises a power to direct a planning authority to refuse planning permission, it will be treated as a principal party at the appeal and may be liable for an award of costs if they behave unreasonably. Highway authorities no longer have the power to direct a local planning authority to refuse planning permission on highways grounds.
18. Although the Highway Authority was thus an interested party, it was neither a principal party to the appeal, nor a Rule 6 party. In these circumstances, the PPG advises that it is not anticipated that awards of costs will be made in favour of, or against, interested parties, other than in exceptional circumstances.
19. Notwithstanding the above, the Highway Authority advised the appellant 4 days after agreeing to the statement, and some 20 days before the hearing opened, that it required an amendment. The appellant declined to entertain this request on the following day. Subsequently, the Highway Authority provided PINS and the appellant with a written position statement setting out why it could no longer agree with Section 2 of the highways statement of common ground. This was provided 14 days before the hearing opened.
20. Section 2 of the highways statement of common ground proposed a solution to the issue of the provision of the link road on third party land. However, this would still have been a matter that would have required discussion at the hearing in order for the Inspector to determine whether the proposed obligation satisfied the relevant tests, irrespective of whether it was agreed by both parties.
21. The Highway Authority sought to amend the statement of common ground when it became aware of an oversight on its part. It is not unreasonable to seek to rectify an agreement based on an inaccurate premise. When it became aware of this oversight, the Highway Authority sought to advise the appellant as soon as practicable. This was both very shortly after the statement was agreed and well in advance of the hearing opening. The Highway Authority did not seek to resile from any other matters covered by the statement.
22. From the correspondence that I have seen, the appellant did not give the Highway Authority any reason for declining the request to amend the statement of common ground other than the statement of common ground had already been signed and the appellant saw no need to change it.
23. Within this context, whilst the Highway Authority seeking to change its position on one point may perhaps have been inconvenient for the appellant, I do not find its actions to have been unreasonable or amount to a lack of co-operation. Nor do I consider that it has been demonstrated that there are any exceptional circumstances which might lead to an award of costs being made against an interested party to an appeal.
24. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

John Dowsett

INSPECTOR