



Costs Decision

Site visit made on 23 July 2024

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2024

Costs application in relation to Appeal Ref: APP/N0410/W/23/3328654 Barnfield, 10 Mid Cross Lane, Chalfont St. Peter, Buckinghamshire SL9 0LF

- 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 Buckinghamshire Council for a full award of costs against Mr Amerjit Braich.
 - The appeal was against the refusal of planning permission for demolition of existing bungalow and erection of detached house and outbuilding.
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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, the Planning Practice Guidance ('the 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. Awards against an appellant may be either procedural in regard to behaviour in relation to completing the appeal process or substantive which relates to the planning merits of the appeal. The application for costs in this case is made on both procedural and substantive grounds.

Procedural

3. The Council refused the planning application subject of the appeal for four reasons. The fourth reason related to a lack of ecological surveys to enable assessment of effects on protected species such as bats. The Council indicates that the appellant submitted a report on 10 July after the application had been refused earlier that day, and a copy of this report which is dated 3 July 2023 and ostensibly prepared by ECOSA ('the July Report') is appended to its costs application. The Council has expressed concerns over the authenticity of the July Report. Having regard to the errors, inconsistencies and the mismatched appearance of the report as highlighted in the Council's application as well as written confirmation from the purported author that ECOSA has never taken instruction for the appeal site and did not write the report; I share these concerns. In my view, the July Report is manifestly inaccurate and untrue. Provision of such information is one of the examples given in the PPG of unreasonable behaviour that may give rise to an award of costs against an appellant on procedural grounds.
4. The appellant suggests that they made the July Report for their own understanding and that it was sent in error. They further query why a fake report would be sent in when they had a real one. However, the Preliminary Roost Assessment prepared by Arbtech which the appellant submitted at

appeal stage ('the Arbtech Report') indicates that field surveys were carried out on 4 August 2023 and it is dated as final on 24 August 2023. There is no clear reference in the evidence before me to any other report to suggest that the Arbtech Report is not the 'real' report referred to by the appellant. Given that the Arbtech survey and subsequent preparation of the Arbtech Report did not take place until some time after the application had been determined and the July Report was submitted, I am therefore unclear how a genuine error in the version of the document that the appellant submitted to the Council on 10 July could have arisen. The appellant has not responded to the Council's costs application to offer any further or alternative explanation of events/

5. Moreover, the Procedural Guide: Planning appeals – England ('the Procedural Guide') is clear that appellants must send a copy of the appeal form and supporting documents to the Local Planning Authority as well as to the Planning Inspectorate. In this case, the appeal form indicates that the appeal was submitted by an agent acting on behalf of the appellant. The appellant has not formally advised of any change in roles or directed that the agent was no longer acting on their behalf, and I consider a professional representative acting on behalf of the appellant in this capacity could reasonably be expected to be aware of and follow published procedural guidance.
6. It came to light at a late stage that the appellant had seemingly failed to furnish the Council with a copy of the Arbtech Report, contrary to the process set out in the Procedural Guide. The appellant was invited to provide details if they considered the Arbtech Report had in fact been sent to the Council, but they did not respond to the invitation. On that basis, I have no reason to discount the Council's comment that it had not been sent the report by the appellant.
7. While the July Report was not submitted to me as part of the appeal, the Council was accordingly unaware that the 'bat survey completed' comment in the appellant's appeal statement was not a reference to the July Report and in the absence of any alternative survey, its response to the appeal was made in light of the July Report. The appellant did not address this misapprehension in their final comments, or provide any response to the Council's costs application to clarify the position.
8. In my judgement, the appellant's provision to the Council of the July Report which I have found to be manifestly inaccurate and untrue, compounded by the failure to then provide the Council with the Arbtech Report in accordance with published procedures, constitute unreasonable behaviour which have caused the Council to incur unnecessary and wasted expense in considering and responding to the appeal in respect of the fourth reason for refusal.

Substantive

9. The PPG explains that the right of appeal should be exercised in a reasonable manner and that an appellant is at risk of a substantive award of costs if the appeal had no reasonable prospect of succeeding. This may occur in situations including where the development is clearly not in accordance with the development plan and no other material considerations are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.
10. Notwithstanding the delay in receiving it, the Council has now confirmed that the Arbtech Report would address the fourth reason for refusal.

11. The Council's other reasons for refusal related, in essence, to effects on character and appearance and neighbouring living conditions and to parking provision and associated effects on amenity. The appellant's statement and final comments are very brief and provide little discussion to explain why the appellant disagrees with the Council. However, the risk of an award of costs does not arise from a failure to make out one's case, but from unreasonably pursuing a claim that has no reasonable prospect of success.
12. While I have ultimately agreed with the Council, effects stemming from the first three reasons for refusal are a matter of planning judgement. Moreover, the proposal would clearly conflict with Policy H11 of the Chiltern Local Plan 1997 (including alterations adopted 2001, Consolidated 2007 and 2011) insofar as it includes a requirement for a minimum of 1m between flank elevations at or above first floor level and the boundary, but I have found in my decision that this in itself would not be conspicuous in the context of the appeal site. The accordance or otherwise of the proposal with other policies of the development plan cited by the Council is more nuanced, reflecting planning judgements as to the acceptability of effects of development.
13. Given these judgements and despite the limited evidence put forward for consideration by the appellant, I am not persuaded in this case that the development is so clearly not in accordance with the development plan and lacking in material considerations to indicate that the decision should have been made otherwise that there was inevitably no reasonable prospect of success such that the appeal was wholly unwarranted.
14. On that basis, I find that the appellant has not behaved unreasonably in pursuing the appeal.

Conclusion

15. While I find that the appellant has not behaved unreasonably in respect of substantive matters, I find that unreasonable behaviour by the appellant resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in respect of material pertaining to the Council's fourth reason for refusal and a partial award of costs is justified on procedural grounds.

Costs Order

16. 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 Mr Amerjit Braich shall pay to Buckinghamshire Council the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to defence of the fourth reason for refusal and review of associated material; such costs to be assessed in the Senior Costs Office if not agreed.
17. The applicant is now invited to submit to Mr Amerjit Braich, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J Bowyer

INSPECTOR