



Costs Decisions

Hearing held on 16 October 2024

Site visits made on 15 and 16 October 2024

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2024

Costs application in relation to Appeal Ref: APP/C3240/W/24/3344946 Land to the East of The Glebelands and South of Park Lane, High Ercall, Shropshire TF6 6BB

- 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).
 - Applications are made by V300 Project Services Limited for a full award of costs against Telford and Wrekin Council, and by Telford and Wrekin Council for a full award of costs against V300 Project Services Limited.
 - The appeal was against the refusal of planning permission for 5 self-build houses.
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Decisions

1. The applications for an award of costs are refused.

Procedural matter

2. At the Hearing, it was agreed that the Costs applications would be made via an agreed written representations procedure following the close of the Hearing. This Decision follows the conclusion of that procedure.

Reasons

3. 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.
4. Before considering the application subject to this appeal ("the Appeal Application"), the Council had provided pre-application advice to the appellant and considered a previous planning application for 10 dwellings at the site. Both identified a number of matters of concern to the Council, including effects on archaeology, biodiversity, highway safety and drainage.
5. When first submitted, the Appeal Application was for 10 dwellings. That was later revised to 5 dwellings, although the Council considered it as being for 'up to' 5. While this incorrect description was stated on the decision notice, it has not been shown to have affected the Council's approach to the application or the appellant's approach to the appeal. It appears that there was limited dialogue between the parties while the application was under consideration and the Local Highway Authority comments were only made available three working days before issuing their decision to refuse planning permission.
6. That said, despite the numerous reasons for refusal of the earlier application, it seems that the appellant provided substantially the same information for the

Appeal Application. Thus, while the Council could have offered opportunity to make revisions or provide further information, including in response to the late highway authority comments, the appellant had, equally, chosen not to take the opportunity to proactively address known concerns. Indeed, a large part of the evidence base before me in these appeal proceedings pre-dates the earlier planning application.

The application by V300 Project Services Limited

7. The Council did not afford time between the receipt of highway authority comments and issuing of the decision for the appellant to consider a response. However, this must be seen in the context of other objections to the proposal such that negotiation on that point would not have resulted in planning permission being granted. In any event, the parties maintained their respective, substantiated, positions in respect of highway safety throughout the appeal. Therefore, even if time could have been given, it has not been shown that a failure to do so would have avoided expense on the issue in the appeal process.
8. The Council's officers had limited availability for discussions during preparation of the Statement of Common Ground (SoCG). However, ultimately, there was sufficient time for the SoCG to be agreed by the required deadline. Where matters had needed discussion, the appellant has clarified that the area team leader was able to assist in the case officer's absence.
9. I understand that the Council was unwilling to confirm the authorship of their statement of case. While that the statement forms the representations of the Council rather than a particular officer, it is unclear why they did not wish to confirm this. Nevertheless, it has not been shown how that had any practical impact on the appellant's ability to prepare for the appeal or continue dialogue with the Council, as communication was clearly taking place between the appellant's agent and Council officers. Thus, it has not been shown that the Council were obstructive or acted unreasonably at that time.
10. While the draft conditions in the SoCG were replaced in totality by the Council, it has been explained that this was intended to make a more accessible working document. I can see that a 'track changes' document, or elaboration of the Council's concerns in that regard may have been helpful, but I find the Council's approach was not unreasonable.
11. The appellant cites delays in the Council's responses to their requests and to mine. However, these only amount to a small number of days. While it was necessary to work to Planning Inspectorate imposed deadlines, and a lack of immediate response may have been frustrating to the appellant, the small delays do not amount to unreasonable behaviour, nor have they been shown to result in wasted expense.
12. The Council produced their appeal statement in advance of the SoCG. In it, they set out that it had not been possible, at that stage, to reach agreement. While I can understand why the appellant may have interpreted those submissions as something of a personal attack, they appear to be more of a statement explaining why agreement had not been reached and clarifying that the draft SoCG, as it stood at that point in time, did not reflect the Council's position. Such was not unreasonable, nor has it been shown to have caused wasted expense in the appeal process.

13. In the days before the Hearing, I requested that the parties produced a typed list of their attendees. The appellant is critical of the Council for providing this only just before the Hearing, affording them no time to consider appointing additional representatives in connection with certain topics. However, there is no requirement for advanced notification of attendees. It is for the parties each to decide in advance of the Hearing who will represent them at the event. My request was an administrative one, to assist me. My expectation was that the list would be handed to me at the Hearing, with an electronic version provided to my Case Officer, purely to facilitate record keeping at the Planning Inspectorate. No unreasonable behaviour has occurred here.
14. The day before the Hearing, the Council advised that they had provided, and previously relied upon, an incorrect version of the Ercall Magna Neighbourhood Development Plan (NDP). While nobody was able to explain how the situation occurred, an administrative error appears to have resulted in the incorrect plan being uploaded to the Council's website.
15. That the correct version of part of the development plan was unavailable to the appellant until the day before the Hearing is unreasonable behaviour. However, the Council has confirmed that the correct version of the NDP and, in particular, the policy identified in their officer report, makes no difference to their position.
16. Furthermore, the appellant also provided a different incorrect version with their appeal documents. The appellant's version was clearly not the made NDP, because it is titled as the Regulation 15 Submission Plan. Therefore, it has not been shown that the appellant's preparation for the appeal, nor the case that they were expected to answer would have changed had the correct policy been available. Accordingly, it has not been shown how the unreasonable behaviour has led to any wasted expense in the appeal process.

The application by Telford and Wrekin Council

17. As noted above, the appellant has provided little substantive new evidence in response to the reasons for refusal, a number of which were set out in the previous refusal of planning permission. However, I have broadly agreed with the appellant's initial position in respect of the effects on highway safety, and their position in respect of archaeology and drainage was that conditions could be imposed to mitigate any potential harm.
18. While I have not agreed that imposing conditions would be appropriate in this case, the reasons for refusal were, essentially, based on a lack of evidence rather than specific harm having been identified. Therefore, although they were long-standing concerns of the Council, it was not unreasonable for the appellant to adopt that position.
19. To some extent, the appellant suggested the same approach in respect of mitigating effects on biodiversity. Nevertheless, in this regard, the appellant also sought to rely upon a claim that their Preliminary Ecological Appraisal (PEA) confirmed that no harm would arise. Those conclusions of the PEA were in respect of sites elsewhere, whereas the potential for harm is at the site itself. In short, the evidence being relied upon clearly did not assist the appellant's case.

20. The PEA also very clearly set out that further surveys of the site were required in order to understand the ecological constraints. Despite a similar reason for refusal to the previous application, the appellant has, in effect, ignored this advice from their own consultants throughout the Appeal Application and appeal proceedings. By themselves, these actions may well be unreasonable, but there are mitigating circumstances here.
21. While the PEA identified the need for further work, the Council's concern was not clearly set out. The second reason for refusal makes vague assertions about an inability to confirm that a statutory offence will not occur. It does not say what potential effects those relate to. The officer report is similarly vague: Although a lack of bat survey is referenced, the lack of biodiversity net gain assessment is not clearly related to the potential for loss of priority habitat. While matters are crystalised to some extent in the appeal statement, in this context, I find that unreasonable behaviour in, essentially, seeking to rely on conditions to avoid harm, has not been demonstrated in connection with this issue.
22. The appellant also advanced a written case that the Council's policy officers were in support of the proposal but their consultation response can only be read in that way if caveats are ignored. Once again, the appellant has sought to rely on evidence that does not assist them when it is properly read in totality and that is unreasonable. Nevertheless, even if that case had not been made by the appellant, it is unlikely that an appeal would have been avoided, or issues reduced, because the main issues, including those flowing from the officer's caveats, were still disputed. Therefore, no unreasonable behaviour leading to unnecessary or wasted expense occurred.

Conclusions

23. With regard to the above, I find that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred by either party and an award of costs is not warranted.
24. Both applications are refused.

M Bale

INSPECTOR