



Costs Decision

Hearing held on 10 December 2024

Site visit made on 10 December 2024

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2025

Land off Boundary Lane, Hesketh Bank PR4 6AJ

Costs application in relation to Appeal Ref: APP/P2365/W/24/3350235

- 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 West Lancashire Borough Council for a full award of costs against Applethwaite Homes Ltd.
 - The appeal was against the refusal of planning permission for the demolition of an existing bungalow and the erection of 34no. adaptable and accessible bungalows for over 55's with associated infrastructure, landscaping and car parking.
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Decision

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

The submissions for West Lancashire Borough Council

2. The costs application was submitted in writing at the Hearing. No additional points were made orally at the Hearing, but a written response was later received.

The response by Applethwaite Homes Ltd

3. As agreed, the response was made in writing after the Hearing.

Reasons

4. 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.
5. The aim of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case. The Council's application is based on procedural issues around the submission of late evidence and consequences that flow from that.
6. The PPG outlines examples of the type of behaviour that may give rise to a procedural award against an appellant. This includes resistance to, or lack of co-operation with the other party or parties in providing information, discussing the application or appeal; and introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.
7. A viability assessment was submitted by the appellant with the appeal. This assessment was not part of the planning application considered by the Council, though the appellant explains that it was submitted because the Council had not

addressed their Affordable Housing Statement in its Officer Report. Their point was elaborated upon in the Statement of Case submitted at the outset of the appeal. In short, the appellant was seeking to establish what it appeared to be potential common ground between the parties, given the Council's position was unclear. That was not unreasonable to do so.

8. This led the Council to seek independent advice at cost to the Council. That is, however, a cost for the Council to bear as part of the appeal process. But, in assessing the appellant's assessment, further information was requested on 23 October 2024 to substantiate and clarify the abnormal costs that were included in the costings. The appellant responded on 28 October 2024 to inform the Council that they had been given all relevant information in respect of the viability claim and that an assessment can be made on this basis. That led to the Council to issue its report on 15 November 2024.
9. However, following my pre-hearing note, issued on 20 November 2024, the appellant provided the information that had been requested several weeks earlier on 21 November 2024 to the Council. The appellant says that the Council's original request was vague and did not itemise the documentation sought. The request appears straightforward to me. But even if that wasn't the case, the appellant could have asked what material was sought. I recognise that they tried to ascertain the name of the Council's consultant, only to be denied that information. That was unhelpful by the Council, but the appellant could have asked the Council to explain what information it was seeking more clearly in writing beyond a suggestion to review the scheme's costs against similar benchmark schemes and using BCIS and a view that the Council effectively had all the information it needed.
10. Why it took a deadline that I set for the appellant to provide the material requested some four weeks earlier is unknown. I acknowledge that both parties acted swiftly after the material was exchanged to reach an agreement and then submit a signed s106 agreement ahead of the Hearing, and that in doing so, there were tight deadlines to meet. However, that does not alter the appellant's unreasonable behaviour in not providing the requested information earlier in the appeal process.
11. The appellant's actions led the Council to seek further advice for its advisor to reappraise the viability assessment at cost to the Council. However, while there may have been some extra cost, the specifics of this compared to what the Council would have been expected to meet as part of assessing the viability assessment have not been explained. I am also mindful that the Council's own actions have contributed to the situation not being resolved as early as it could and should have been. So, even though I consider the appellant acted unreasonably in withholding information that had been requested, the Council at least played a role in that, and in any event, has not explained how it has incurred unnecessary or wasted expense in the appeal process.
12. On 6 December 2024, the appellant submitted a document titled 'surface water flood map overlay with topographical survey and explanatory note'. This material was submitted shortly prior to the Hearing, and the parties were advised that it was late and that it would be discussed at the Hearing should the appellant still wish to submit the document. It was established at the Hearing that the document contained material that had previously been submitted as part of the planning application. It was an amalgamation of material onto a single document with the aim of helping discussion at the Hearing. Hence, it was not new evidence. I agree

with the Council that this document should have been submitted earlier to allow it to be reviewed by the Council ahead of the Hearing but it should have been clear that the maps were based on material already available, as explained in paragraph 1 of the document, and what the document's purpose was. The accompanying text was factual in nature and did not introduce new evidence. The Council was given the opportunity to comment on the document at the Hearing. For these collective reasons, no procedural unfairness has arisen in respect of this document, and no unreasonable behaviour, albeit the timeliness of the document's submission was unhelpful and need not have occurred.

13. On 26 November 2024, the Older People's Taskforce published their work. As that documentation became available after the submission of statements and the Statement of Common Ground, and given the nature of the development proposed, it was material relevant to the appeal and material not previously available. The appellant submitted an explanatory note as I had directed and shared it with the Council on 29 November 2024. That was to give the Council the opportunity to review the material ahead of the Hearing. That note discussed three documents published by the Older People's Taskforce but did not include them.
14. A further document was submitted by the appellant on 4 December 2024. This was not requested or sought but nevertheless included a Written Ministerial Statement (WMS) published on 26 November 2024. Again, it was relevant material, and the WMS is publicly available. Even though the Council's attention seems to have been drawn to it through the appellant's submission, the WMS follows up on the Older People's Housing Taskforce Report and is relatively short. The note accompanying the WMS did not introduce new evidence as it contained a factual reference to the WMS and then set out three paragraphs from the WMS.
15. The timing of the evidence submitted on 29 November and 4 December 2024 was not ideal but responded to circumstances outside of the control of anyone involved in the Hearing. Equally, I am unclear how the Council was put at a disadvantage given that it accepted that there is a borough-wide need for this form of housing. The Council had the opportunity, albeit within relatively tight timescales, to review the information and respond to the material at the Hearing. However, even if I were to consider the appellant's actions in respect of the evidence submitted on 29 November and 4 December 2024 to be unreasonable, the Council has not set out how it has incurred unnecessary or wasted expense in the appeal process beyond those it would be expected to incur. Being stretched and placed under pressure does not sufficiently do so.
16. My pre-Hearing note asked the parties to engage, discuss, and agree (or at least set out clear reasons why you disagree) on the proposal's compliance against Policy RS2 and the Framework and the consistency of Policy R2 with the Framework; and whether biodiversity net gain could be secured off-site, and if so, where, and how that would be secured. I asked the parties to submit notes on both by 4 December 2024. The parties did engage, but not in time to submit notes by that date. A short extension of time was granted upon the Council's request to 5pm on 5 December 2024.
17. The additional work requested also related to the suggested list of planning conditions. I had provided my initial comments on these on 20 November 2024. The appellant then explained in their pre-Hearing note response on 27 November 2024 that they did not consider condition 17 to be necessary as the bat roost had

been removed. The party's difference of opinion was recognised within the Statement of Common Ground dated 7 November 2024. I am clear that both parties knew this, and the issue was not therefore unexpected or new. As a result, the Council had sufficient time, regardless of the extension of time granted, to seek the ecologist's view on the subject, including on the appellant's point about the need for condition 17. In any event, they would have been matters that I would have reasonably asked the Council for a response on as part of the Hearing. At the Hearing the Council did not draw upon advice from their ecologist and, in fact, agreed with the appellant's view that condition 17 was not necessary.

18. Again, points relating to Policy RS2 and the Framework were matters that both parties would have been asked to comment upon at the hearing as they were identified as a matter in dispute in the Statement of Common Ground. Hence, such matters would logically be discussed further at the Hearing. The fact that the parties were asked to engage in the matter beforehand was done to make effective use of Hearing time. The Council's need to speak to its Housing Strategy and Development Programme Manager about affordable housing was borne out of the viability assessment and s106 planning obligation. Those discussions are normal during an appeal, and the Council has not explained why they have caused wasted expense even if the appellant's actions were unreasonable.

Conclusion

19. Therefore, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Andrew McGlone

INSPECTOR