



Costs Decision

Inquiry Held on 5, 6, 12, 13, 14, 19 November 2024

Site visit made on 24 October 2024

by K Ford MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th January 2025

Costs application in relation to Appeal Ref: APP/H1840/W/24/3347643 Land at Orchard Farm, North of Defford Road, Pershore WR10 3BY

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Formula Land Ltd for a partial or full award of costs against Wychavon District Council.
 - The Inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the demolition of existing farmhouse, agricultural buildings and structures, the erection of a phased development of up to 300 residential dwellings (Use Class C3) and associated public open space, drainage, infrastructure and engineering works with all matters reserved except access.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The PPG sets out a number of examples where a local planning authority is at risk of an award of costs. The behaviour of parties during the time of the planning application can be taken into account in deciding whether unreasonable behaviour has occurred, although the costs themselves can only be awarded in relation to unnecessary or wasted expense at the appeal.
4. The applicant has made an application for either a full or partial award of costs that relate to procedural and substantive matters.

Failure to Provide Written Pre-application Advice

5. The applicant made a formal request for pre-application advice in January 2023 for a 430 dwelling scheme. Technical reports to support an amended 300 dwelling scheme were provided on 2 May 2023 after which time the applicant identifies that there was no further correspondence from the Council.

6. Whilst the Council say they were undertaking action after this date, such as chasing statutory consultees, it appears that this was not communicated to the applicant.
7. The applicant is particularly critical of the lack of written advice from the Council which they had paid for as part of the pre-application service. In response the Council suggests that the submission of a planning application in the interim negated the need to provide a written pre-application response.
8. Whatever the reasons for the delays and absence of a written response there is little to indicate that such a response would have avoided the need for the appeal, even if there had been some narrowing of the issues between the parties through the pre-application process.

Failure to Provide Environmental Impact Assessment (EIA) Screening Opinion in Reasonable Timescale

9. The Council acknowledge that they should have responded more quickly to the formal EIA screening request, initially submitted in March 2023. Even after requests from the Secretary of State the Council did not respond until 7 November 2023, which is excessive even when taking into account amendments to the scheme. Whilst the Council says such delays are not uncommon, it does not make them acceptable.
10. When a screening opinion was provided it confirmed that an Environmental Statement was not required. As such the delay did not ultimately have any bearing on the appeal and as such did not generate an unnecessary or wasted expense.

Non-Determination of the Planning Application

11. The applicant says that a failure to engage with the applicant led to an appeal against non-determination. However, it is clear from the evidence before me that at the time of the appeal submission there were a number of outstanding matters from interested parties including statutory consultees. Earlier determination of the application would have almost certainly been one of refusal in those circumstances. This was confirmed in the Council's putative reasons for refusal following the appeal submission.
12. The Council surmises that the applicant's decision to appeal was because they would have been in a weaker position once the examination of the emerging Local Plan had commenced. I do not agree. There is uncertainty surrounding the progress of the emerging plan and even if examination hearings do start in March 2025, it will be some time before significant weight can be given to the policies in that document.
13. On the evidence before me an appeal was inevitable, even with a narrowing of the issues on matters such as transport. Non-determination of the planning application did not therefore lead to unnecessary or wasted expense at the appeal.

Ecology Matters

14. The applicant says that the Council failed to give great weight to the advice of Natural England dated the 4 June 2024 which identified that the proposed development was capable of mitigation. If disagreeing with the position of Natural England the applicant says the Council failed to provide cogent and compelling reasons to depart from the advice.
15. Prior to the appeal being lodged the Council was unaware of the position of Natural England as they were not engaged in correspondence between the applicant and the statutory consultee. Correspondence from Natural England known to the Council was that of objection to the scheme on the basis of an absence of a lack of certainty about the package of measures to ensure that the interest features of Tiddesley Wood would not be damaged or destroyed.
16. At Inquiry the Council were aware of Natural England's comments of 4 June 2024. However, discussions regarding mitigation measures were still ongoing between the applicant and Worcestershire Wildlife Trust even during the Inquiry. Given that the Council were excluded from these discussions, I do not think the Council acted unreasonably.
17. At Inquiry the Council's witnesses provided evidence to justify their view that the development would cause harm to the woodland. It is evidence to which I did not agree but it is a view that they were entitled to take and in providing that view the witness did not act unreasonably. In forming this opinion, I disagree with the applicant's interpretation of the evidence given by the Council's witness on whether the provisions of paragraph 193 of the National Planning Policy Framework would be triggered by the death of one bird or the breaking of a single tree branch.
18. The applicant is particularly critical of the Council's Landscape and Natural Heritage Officer. Whilst the officer could have elaborated on the reasons why they agreed with the position of the views of Natural England and Worcestershire Wildlife Trust it would not have led to a different outcome. In any event the officer did provide a detailed response on the ecological implications of the scheme during the process. The fact that the Council chose to employ an external expert witness to represent them in the Inquiry is a matter for them.
19. Whilst there is criticism by the applicant of the Council's initial intention to use a representative of the Worcestershire Wildlife Trust as their expert witness ultimately this did not happen. There is nothing before me to indicate that the view of the Worcestershire Wildlife Trust on the case influenced the view of the Council or their witness at the Inquiry.
20. The representative of the Worcestershire Wildlife Trust appeared as an interested party and the applicant's advocate was able to question the representative, as they could have chosen to do with any other representor speaking at the Inquiry. There were no unnecessary costs to the applicant as a result.

Highways

21. At the time the applicant appealed against non-determination there were outstanding unresolved highways matters. During the course of the appeal

leading up to the Inquiry there was ongoing discussions between the parties which sought to narrow the areas of dispute. These discussions inevitably led to a change of position by the Highways Authority as outstanding highways related matters were resolved.

22. On the evidence before me in matters related to traffic surveys and street lighting the Council did not act unreasonably. In terms of the traffic surveys there was a change in circumstances emanating from the delay to the traffic surveys and the agreement made in the interim on mitigation to the Three Springs Road junction. The Highways Authority's changed position on the streetlighting assessment followed information gained about existing lighting provision on the relevant stretch of the A4104 Three Springs Road and Defford Road. The changed position related to the timing of the streetlighting assessment not whether it would be required.
23. The applicant states that a request to safeguard land for a cycle/ pedestrian connection to the Holloway application to the North East of the appeal site was new and not something they were previously aware of. Whilst initially sought by the Highways Authority it was not pursued when it became apparent that it would not be implementable and that the requirement was not Community Infrastructure Levy compliant. The Council's advocate raised the matter at the end of the Inquiry but it was not pursued any further when I indicated that there would be a need to hear evidence on the matter given that there was little before me up until that point. The matter was subsequently dropped by the Council and as such the applicant was not put to any additional work or expense.
24. In terms of whether a highways proof was required, it is unclear why the Council did not respond to the applicant on this matter, particularly given that there was other communication between the parties after the question had been asked by the applicant on 3 October 2024.
25. It is also unclear why the letter from the Highways Authority saying that they had no objection to the development dated 27 September 2024 was not received by the applicant until 7 October 2024, one day prior to the deadline for the submission of proofs.
26. Nevertheless, the applicant was aware of the contents of a draft Highways Statement of Common Ground on 3 October 2024 which identified that the transport reasons for refusal had been removed even though final agreement on the wording of the Statement of Common Ground was not reached until 10 October 2024.
27. In addition, there were highways objections from interested parties which needed to be addressed, irrespective of any withdrawal of objection by the Highways Authority. In this context whilst the communication between the parties was poor in this instance it does not amount to unreasonable behaviour which has resulted in the applicant incurring unnecessary or wasted expense in the appeal process.

Other Matters

28. In the cases put by the parties there is reference to matters not before me during the Inquiry and information which seeks to rehearse or further

arguments heard in the Inquiry. This should not form part of the costs application and I have disregarded it accordingly.

Conclusion

29. On the information before me, I find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated either individually or when taken together. An award of costs is not therefore justified in this case.

K Ford

INSPECTOR