



Costs Decision

Site visit made on 1 October 2024

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2025

Costs application in relation to Appeal Ref: APP/X2410/W/23/3330662

Land off Hoby Road, Thrussington, Leicester, LE7 4TH

Grid Ref Easting: 465124; Grid Ref Northing: 316162

- 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 Charnwood Borough Council for a full award of costs against SI Thrussington Ltd.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for outline planning permission for nine new detached dwellings and new means of access off Hoby Road (access and layout to be considered).

Decision

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

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.
3. Paragraph 052 of the PPG gives examples of behaviour which may give rise to a procedural award of costs against an appellant, including "only supplying relevant information at appeal when it was requested, but not provided, at application stage"¹. Paragraph 053 states that "an appellant is at risk of [a substantive] award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding", including when "the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence"². The Council considers that the applicant's behaviour in respect of the proposed development falls broadly within these two examples.
4. In support of its claim, the Council notes that the applicant submitted material at appeal stage (specifically a Unilateral Undertaking) which it considers did not address the Council's concerns in respect of biodiversity. It also suggests that the appeal "lacked sufficient planning merit", as the applicant had been advised previously that there were "fundamental concerns and technical issues with the proposal", and goes on to state that "the appellant has also attempted to

¹ Reference ID: 16-052-20140306; Revision date: 06 03 2014

² Reference ID: 16-053-20140306; Revision date: 06 03 2014

overcome concerns in response to the Councils appeal submissions, despite being aware of the concerns prior to the submission of the appeal”.

5. The last of these points is not in itself, to my mind, an indicator in any way, shape or form of unreasonable behaviour. In my experience it is an entirely normal part of the appeal procedure for an appellant to attempt to address concerns as part of their submissions. This is especially so in cases where, as here, the Council has not determined the planning application and, regardless of the weight of correspondence which has or has not gone before, the Council’s appeal statement may be the first time its objections to a proposed development have been set down in full.
6. For reasons that I have set out in my main decision I found that, notwithstanding the Council’s misgivings, the final version of the Unilateral Undertaking submitted would be adequate, within the scope of an application for outline planning permission, to address concerns about a loss of biodiversity. I note also that the planning application had been submitted in March 2023, and biodiversity issues were being discussed between the parties between May and September that year, with the first definitive confirmation that the Council required a Biodiversity Impact Assessment being communicated to the applicant on 5 September 2023. I infer that the preparation of the Unilateral Undertaking followed on from this, and as the Council would presumably have had to deal with it in any event (whether this was before issuing a decision, had they done so, or during the appeal) it is not clear to me how any unnecessary expense was incurred.
7. Considering the appeal as a whole, I ultimately agreed with the Council that, because of the division of the wider site to be allocated for housing development in the Emerging Local Plan, the proposed development would not make efficient use of land and would not represent “sustainable development” in the terms set out in the National Planning Policy Framework. However, the Council’s officer report, in weighing up the different policy approaches in the 2015 Charnwood Core Strategy and the Emerging Local Plan, had commented that “the principle of development is balanced”. Ultimately, while I did not find the arguments put forward during the appeal by the applicant to be persuasive overall, that I reached this conclusion is not in itself demonstrative either of the appeal having had no reasonable prospect of succeeding, or of the applicant having otherwise acted unreasonably.

Conclusion

8. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated, and an award of costs is not therefore warranted.

M Cryan

Inspector