



Costs Decision

Site visit made on 25 February 2025

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2025

Costs application in relation to Appeal Ref: APP/P1425/W/24/3351850

Site North Of Slugwash Gardens, Slugwash Lane, Wivelsfield Green RH17 7QD

- 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 Remmus Designer Homes Limited for a full award of costs against Lewes District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for erection of 6no. residential dwellings with associated landscaping and parking and the retention of existing access.
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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 (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. The PPG goes on to provide examples of unreasonable behaviour by local planning authorities, which include amongst other things preventing or delaying development which should clearly be permitted, making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis and not determining similar cases in a consistent manner. The PPG also warns that delays in the application process leading to an appeal against non-determination may result in an award of costs against the local planning authority, if an appeal is allowed, in circumstances where it is concluded there were no substantive reasons to justify delaying the determination and better communication would have enabled the appeal to be avoided altogether.
4. The appellant's application for costs raises several grievances relating to the period when the application was under the Council's consideration. In large part, these relate to a reversal of the initial officer recommendation that planning permission should be granted, which had been published in an officer report in January 2024, and a series of subsequent delays and deferrals, during which there was a lack of clear progress or communication of the Council's position.
5. The application was deferred shortly before the January 2024 Committee meeting at which a decision was scheduled to be taken, with a recommendation that planning permission be granted subject to legal agreements and conditions. The reason for the deferral was explained in a supplementary report to the Committee, and communicated to the appellant, albeit at very short notice. Representations

- had been received alleging that the officer report did not give adequate consideration to the effect on Baldings, a nearby Grade II listed building and the application was deferred for further assessment on this specific point. Deferral of the decision in response to the matters which had been raised at that point was not, in itself unreasonable, in the context of the Council's statutory duty as set out in s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
6. There was then a considerable delay, with heritage advice being sought from an external consultant, following internal staff changes. That advice is dated around two months after the application was deferred and the appellant subsequently submitted further heritage evidence in rebuttal. Following that exchange of evidence, officers advised the appellant that the recommendation would be changed to refusal, based on the heritage advice.
 7. The Council acknowledges that officers involved in the decision-making process changed their position at that point. Had heritage advice been sought at an earlier stage, a more consistent approach could have been taken. In addition, no clear explanation has been given for the lack of any heritage reason for refusal in relation to a previous application for 17 dwellings on the site, determined in 2018. As such, there is some evidence of a lack of consistency in the decision-making process. Nevertheless, having sought and received professional advice which raised specific concerns about the effect of the development on the setting of the listed building, it was not unreasonable that officers acted on that advice as a material consideration relevant to the determination of the application, leading to the change in recommendation.
 8. For the reasons given in the appeal decision, no clear conclusions can be drawn from the appeal decision on the Manor Nursery site¹, since that appears to draw on the recommendation in the January 2024 officer report and there is no evidence that the Inspector was party to the subsequent heritage advice. On that basis, it is not unreasonable that the Council did not consider that decision to be relevant.
 9. In the January 2024 officer report, some harm was identified to the character and appearance of the area, but that harm was concluded to be outweighed by the benefits of the proposal. The Council has given greater weight to this issue following re-assessment of the proposal, taking account of points raised in the heritage advice. Some of those points were also relevant to the effect on the character and appearance of the area more generally, so it is not unreasonable that they were taken into account in the Council's statement of case for this appeal.
 10. The approach in paragraph 215 of the National Planning Policy Framework (the Framework) was not explicitly applied in the Council's statement of case for this appeal. However, it did set out the public benefits of the proposal, including the contribution to housing land supply. The weighing up of harm versus benefits is a matter of judgement and the Council's case is adequately substantiated and not based on vague, generalised or inaccurate assertions.
 11. While the appellant suggests that the Council's statement of case is not factually correct, since it refers to the proposed footway along Slugwash Lane, the footway does form part of the proposed development as described in the appeal submission. Therefore, it was not unreasonable for the Council to have regard to it when preparing their statement of case.

¹ Appeal Ref: APP/P1425/W/24/3337649

12. There was a considerable delay in the decision-making process, between January 2024 and submission of the appeal in September 2024. During that period, the Council repeatedly failed to communicate clearly regarding either the likely outcome of the application or the reasons for the delays. Meetings were deferred with little apparent explanation and promises to provide updates were unfulfilled. The Council acknowledges that there were delays, relating amongst other things to lack of staff. Nevertheless, during that period, the Council's approach fell well short of the proactive approach advocated in paragraph 39 of the Framework, and it is clear that caused considerable uncertainty for the appellant, as well as significantly delaying the application and appeal process.
13. That said, the likelihood that the application would be recommended for refusal was first expressed in May 2024 and there is no clear indication that the recommendation would have been different, had a more timely approach been taken. Following a meeting regarding the change in recommendation, the appellant wrote to set out their dissatisfaction with the process, and also expressed an intention to appeal against refusal of the application, if that was the outcome. They subsequently maintained their position that the potential recommendation to refuse was unjustified.
14. Therefore, while it is possible that the appeal would have been submitted earlier, if the Council had made a timely decision on the application, there is no clear evidence that it could have been avoided altogether. The appeal evidence demonstrates that the issues of concern to the Council were known to the appellant and there is no evidence of any abortive work on evidence not relevant to the Council's purported reasons for refusal. Furthermore, since I have concluded that the appeal should be dismissed, it follows that I do not consider that the Council's behaviour prevented or delayed development which should clearly have been permitted.
15. That being the case, while there was unreasonable behaviour by the Council, in relation to consistency and the level of delay and lack of communication, based on the evidence before me it has not been demonstrated that the appeal could have been avoided or that unnecessary costs were incurred in the appeal process as a result. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Jane Smith

INSPECTOR