
Costs Decision

Hearing held on 18 March 2015

Site visit made on 18 March 2015

by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 May 2015

Costs application in relation to Appeal Ref: APP/L3245/A/14/2227146 Rush Lane, Market Drayton, Shropshire TF9 3QX

- 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 Shropshire Council for a full award of costs against Gladman Developments Limited.
 - The Hearing 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 outline planning permission for up to 162 dwellings with associated open space and landscaping, with all matters reserved except for access.
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Decision

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

The submissions for Shropshire Council

2. The Council consider that following the grant of outline planning permission for the same development on the appeal site, the appellant has acted unreasonably in pursuing the appeal.
3. Accordingly, the Council consider that it has been put to unnecessary expense in processing the appeal, including sending appeal notifications to interested parties, preparing the statement of case and statement of common ground (SoCG), as well as preparation for, and attendance at the Hearing. Furthermore, the Council incurred costs in terms of the Hearing venue, which was unnecessary as the areas of disagreement between the parties could have been considered through the written procedure, rather than a Hearing.

The response by Gladman Developments Limited

4. The appeal was submitted following the appellant's frustration at the lack of progress in determining the planning application. There was no indication that the subsequent application on the site would be determined prior the appeal being considered. Once permission had been granted, and following the agreement of the SoCG, it was too late to change the appeal to the written representations procedure and cancel the Hearing.
5. Furthermore, the appellant was not happy with the master plan conditions attached to the planning permission on the site. This matter was raised with the Council in correspondence dated 1 October 2014. Whilst the Council indicate that the wording of condition No 4 changed following discussions with

the appellant, it attached a Grampian style master plan condition to the planning permission.

6. The appellant considers that a Grampian master plan condition, and condition requiring that it is adhered to, are not reasonable or necessary. As such, and given that the Council were suggesting that the same conditions were attached to the appeal proposal if the appeal was successful, it was necessary to pursue the appeal. The appeal was therefore reasonable and necessary and the appellant did not act unreasonably in pursuing the appeal.

Reasons

7. The Planning Practice Guidance (PPG) advises that parties in planning appeals should normally meet their own expenses. All parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
8. The appellant submitted a draft SoCG with the appeal form which stated that the matters in dispute were, amongst other things, the wording of the master plan condition. The appellant submits that the Council did not comment on the draft SoCG in a timely manner. It appears to me, that as a result of this the Council undertook unnecessary work based on the draft areas of disagreement.
9. It was not until just before the Hearing that the main parties agreed a SoCG (10 March 2015). The matter in dispute was the Grampian style master plan condition. The delay in agreeing the SoCG was in part due to the time taken to issue the decision notice for the subsequent application on the site, following completion of the Section 106 Agreement. It seems to me that neither party alone was to blame for this matter.
10. I consider that if the SoCG had been agreed earlier within the appeal timetable, the amount of work undertaken by both parties could have been reduced. The appeal procedure could also have been changed from a Hearing to Written Representations given the matter in dispute. However, by the time the SoCG was agreed, it was too close to the Hearing date to change the appeal procedure as it would have been difficult to advise interested parties of the change. The Hearing procedure was therefore necessary in these circumstances.
11. Throughout the appeal process, the appellant has been supportive of the Council (and vice versa) in seeking adjournments as the subsequent application progressed. Whilst these requests were refused, it certainly indicates that the appellant was aware that both parties may be put to unnecessary expense in preparing their case if the appeal progressed. This does not demonstrate unreasonable behaviour on the appellant's behalf.
12. Whilst the appellant could have withdrawn the appeal before me and submitted an appeal in respect of the disputed condition following the grant of outline planning permission on the site, it is likely that such an appeal would still be in progress at this time. By continuing with the appeal, the appellant was likely to receive a decision sooner than if they had submitted a separate one. As a

result, it is likely that the site could be made available for housing development sooner than if an alternative appeal had been pursued.

13. I therefore find that although the appeal site has planning permission for a residential scheme, the appellant has not acted unreasonably in pursuing the appeal, given the concern the appellant had in respect of the master plan condition suggested by the Council. I shared the view that the objective of the master planning exercise could be achieved by imposing alternative planning conditions. Whilst some of the work undertaken by the Council was unnecessary, this was due to a SoCG not being agreed early on in the appeal process. It was not the result of unreasonable behaviour on the part of the appellant. The work undertaken in respect of a coordinated approach to development on the site by the Council was necessary and does not amount to wasted time and expense.
14. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has not been demonstrated.
15. The application for an award of costs is therefore refused.

R C Kirby

INSPECTOR