
Costs Decision

Inquiry held on 6, 7, 8 and 9 October 2015

Site visit made on 7 October 2015

by C J Anstey BA (Hons) DipTP DipLA MRTPI

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

Decision date: 19/01/2016

Costs application in relation to Appeal Ref: APP/L3245/W/15/3011886 Longden Road, Shrewsbury, Shropshire.

- 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 Morris Homes (Midlands) Ltd. for a partial award of costs against Shropshire Council.
 - The inquiry was in connection with an appeal against the refusal of outline planning permission for the erection of up to 125 dwellings.
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Decision

1. The application for a partial award of costs is not allowed.

Reasons

2. The *Planning Practice Guidance (the Guidance)* indicates that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. One of the examples of unreasonable behaviour that may result in an award of costs given in the *Guidance* is the failure to produce evidence to substantiate each reason for refusal at appeal.
 3. The appellant's costs application relates to Refusal Reason No. 2 which is concerned with the harm that the scheme may cause to highway safety. The Council stated at the start of the Inquiry that Refusal Reason No.2 was not withdrawn. However the Council also confirmed that it would not be producing any evidence to substantiate this highway reason for refusal.
 4. The Council's explanation for this approach is that there was insufficient time before the Inquiry to instruct an appropriate expert to present highway evidence on behalf of the Council. However the Council and the appellant agreed October 2015 Inquiry dates at the beginning of July 2015. Consequently there was a considerable amount of time available for the Council to engage a highway expert and produce evidence. Although the Council sought to postpone the start of the Inquiry the Planning Inspectorate did not consider there were grounds for this given compliance with the timescales set out in the Inquiry Rules. Notwithstanding this the deadline for the receipt of proofs was extended by the Planning Inspectorate to 2 weeks before the Inquiry date.
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5. By failing to produce evidence to substantiate the highway refusal reason the Council clearly acted unreasonably in terms of the *Guidance*. There are no extenuating circumstances that justify the Council's approach as regards Refusal Reason No 2. To justify an award of costs, however, it must be shown that this unreasonable behaviour has directly caused the appellant to incur unnecessary or wasted expense in the appeal process.
6. The appellant produced highway evidence to counter Refusal Reason No 2. This was presented to the Inquiry by the appellant's highway witness. It is considered that this highway evidence, and the attendance of the appellant's highway witness at the Inquiry, was required irrespective of whether the Council produced evidence to substantiate its highway reason for refusal or not. Clearly there were highway issues of importance involved in the case that were raised in Refusal Reason No 2 and by many local people. These highway issues required exploration at the Inquiry and this was achieved by way of Inspector's questions to the appellant's highway witness and by evidence produced by those living in the local area. It is not considered that this made the Inquiry any longer than it would have been if the Council had produced highway evidence. Consequently the appellant has not incurred unnecessary or wasted expenditure in the appeal process as a result of the Council's actions.

Conclusion

7. I have found that, that by failing to produce evidence to substantiate the highway refusal reason the Council has acted unreasonably. However I have also found that the appellant has not incurred unnecessary or wasted expenditure in the appeal process as a result of the Council's actions. In view of these findings, I conclude that there are no grounds for an award of costs in terms of the *Planning Practice Guidance*.

Christopher Anstey

Inspector