
Costs Decision

Inquiry sitting days 12-15 November 2013

Site visit made on 11 November 2013

by Neil Pope BA (HONS) MRTPI

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

Decision date: 10 January 2014

Costs application in relation to Appeal Ref: APP/W1850/A/13/2192461 Home Farm, Belmont, Hereford, HR2 9RX.

- 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 Lioncourt Homes (Development No.10) Limited for a full award of costs against Herefordshire Council.
 - The inquiry was in connection with an appeal against the refusal of outline planning permission for residential development of up to 85 dwellings with access, associated open space, landscaping, infrastructure and parking provision.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Lioncourt Homes (Development No.10) Limited

2. These were made in writing.

The response by Hereford Council

3. These were also made in writing.

Reasons

4. Circular 03/2009 advises that, irrespective of the outcome of an appeal, costs may only 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.
5. Neither the officer's report nor the Council's decision notice clearly show that the benefits of the scheme were weighed with the 'harms'. In particular, the reference to an "*in principle objection*" within the officer's report sits awkwardly alongside the need to carefully weigh and consider all material considerations as part of the planning balance. This tends to support the appellant's argument that the Council acted unreasonably. However, officers and members were aware of the benefits of the scheme and it is inconceivable that the Council did not have these in mind in formulating the report and determining the application. The planning balance is explicit within the proof of evidence of the Council's planning officer and it is not lost on me that some benefits were not identified by the appellant until the appeal stage.
6. Having weighed all the material considerations and undertaken the planning balance I have found that the appeal should not succeed. Any unreasonable behaviour by the Council in respect of this matter did not therefore cause the

appellant to submit an unnecessary appeal and incur unnecessary or wasted expense. A full award of costs cannot therefore be justified.

7. Under paragraph A28 of the above Circular, parties are expected to actively review their cases following the submission of an appeal. This could include matters relating to housing land supply. However, in this instance, the Council's decision to change its stance and argue that it now had a five year supply of housing effectively introduced a new 'reason for refusal' at a late stage in the proceedings. This was bound to have implications for: the evidence submitted on behalf of the appellant; the way in which the appellant's case was presented and; the duration of the Inquiry.
8. In undertaking such a significant change in stance the Council produced a rebuttal/supplementary Statement with very many appendices. This needed to be carefully considered by the appellant. However, under cross-examination, it was evident that this change in stance by the Council was not credible and there was no cogent evidence to substantiate its argument regarding housing land supply. The Council acted unreasonably and at odds with the spirit of paragraph B4 of the Circular. It caused the appellant to incur unnecessary expense in having to respond¹ to the rebuttal and prolonged² the Inquiry.
9. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated and that a partial award of costs is justified.

Costs Order

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Hereford Council shall pay to Lioncourt Homes (Development No.10) Limited, the costs of the appeal proceedings described in the heading of this decision. These costs shall be limited to those incurred in refuting the Council's arguments that it had a five year supply of housing.
11. The applicant is now invited to submit to Hereford Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Neil Pope

Inspector

¹ Prior to the submission of this rebuttal/supplementary Statement the appellant had already produced detailed evidence in respect of housing land supply. Nevertheless, this Statement needed to be considered by the appellant and this resulted in the submission of additional evidence.

² Whilst all the evidence was heard within the scheduled sitting days, the Inquiry was closed in writing to allow for the submission/receipt of closing submissions and the costs applications. I estimate that about half a day of the Inquiry was spent dealing with matters arising from the Council's change in stance.