



Costs Decision

Hearing held on 30 July 2024

Site visit made on 31 July 2024

by Diane Cragg DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 September 2024

Costs application in relation to Appeal Ref: APP/P1045/W/24/3341703 Land North of Old Hackney Lane, Hackney, Matlock, Derbyshire, DE4 2QJ

- 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 Bowsall Developments Limited and EMH Group for a full award of costs against Derbyshire Dales District Council.
 - The appeal was against the refusal of planning permission for erection of 27 affordable dwellings, open space, landscaping, highway improvements and associated works.
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Decision

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

The submissions for Bowsall Developments Limited and EMH Group

2. The costs application was submitted in writing. The applicants seek a full award of costs. This is based on the contention of substantive unreasonable behaviour on the part of the Council. Broadly the applicants assert that the site is allocated for residential development, has been assessed as deliverable and developable, the layout and design of the scheme would be consistent with development on Old Hackney Lane and addresses the concerns of a previous proposal in relation to the estate road. The appeal site's development as a discrete proposal would be entirely satisfactory and would not inhibit the development of the remainder of the allocation. The methodology and rationale for the sum claimed in relation to the education contribution is inconsistent with the legal and policy requirements of the Community Infrastructure Levy Regulations 2010 (as amended) and has not been substantiated.
3. In addition, the applicants contend that they were only informed that the drainage issue was not being pursued when the Council statement of case was received. The entirety of the appeal was not necessary, and the costs incurred therein.
4. The following additional points were made orally. The hierarchy in relation to the drainage submission was not challenged. The Council's changed position in relation to the education contribution underpins the applicants' case in relation to the contribution. Unreasonableness has been made out.

The response by Derbyshire Dales District Council

5. The response was made in writing at the Hearing. The Council says that it was common ground that reason for refusal 3 in relation to drainage had been overcome and recommended conditions were included in the Council's

statement of case. In all other respects the Council maintains that it was not unreasonable of it to refuse permission in respect of the main issues. The County Council provided justification for its changed position on education, the justification is sound, and no additional expenditure has been unreasonably incurred.

Reasons

6. 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.
7. The withdrawal of any reason for refusal is the type of behaviour which may give rise to a procedural award against a local planning authority as set out in the PPG. In this case, despite the withdrawal of the drainage reason for refusal a disagreement remained regarding the proposed conditions. The substance of the Council's argument regarding the application of the drainage hierarchy was credible and there was no unreasonable behaviour in this respect.
8. Policy HC2 allocates land for housing subject to compliance with other policies in the local plan. The site was allocated as a single allocation despite the site selection and assessment of the appeal site and the remainder of the allocation being undertaken separately. While the Council was unable to confirm the reasons for the single allocation at the Hearing, the appeal site and the adjacent land were allocated as one site and the Council's evidence and reasons for refusal did specify conflict with Policy S1 where it seeks development in a comprehensive manner and the efficient use of land.
9. Further, the Council's statement of case sets out why it considers the development should not be approved with reference to the surrounding context and Development Plan policies. The Council produced sufficient evidence to substantiate its case and I am satisfied that the appeal could not have been avoided.
10. Regarding the education contribution, at the time the application was considered at committee the applicants set out their concerns regarding the education contribution. The applicants' position was subsequently clarified in their appeal statement of case, including by providing a separate report in respect of the education contribution and a viability assessment. The Council's statement did not address the applicants' case that an education contribution was not required, nor did they review the applicants' viability statement or indicate that there was a changed position on the amount and type of the contribution. That was unreasonable.
11. The applicants were only made aware of the Council's revised contribution requirements through discussions on the details of the section 106 agreement. The Council's late evidence in respect of the contribution was a significant material change that required the applicants to review their case in a limited time. Further, the applicants had to provide education expertise at the Hearing in response to the Council's case. There is no apparent reason for the Council to have responded at such a late stage and their late submission of evidence regarding education was unreasonable.
12. The Council failed to provide anyone at the Hearing able to respond to questions regarding the revised education contribution and their case for the

contribution has not been substantiated. The Council's behaviour was unreasonable in relation to the education contribution and that unreasonableness resulted in the applicants incurring unnecessary and wasted expense.

Conclusion

13. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has occurred in respect of the preparation of reports, evidence, and correspondence in relation to the education contribution including the viability report and for attendance at the Hearing by the relevant witness with respect to the education contribution. A partial award of costs is therefore warranted to cover the education and viability consultancy work undertaken in respect of the appeal.

Costs Order

14. 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 Derbyshire Dales District Council shall pay to Bowsall Developments Limited and EMH Group, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the education contribution and viability assessment; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicants are now invited to submit to Derbyshire Dales District 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.

Diane Cragg

INSPECTOR