Planning Inspectorate

Costs Decision

Inquiry held on 30 and 31 July, 7 August, 3, 4 and 7 October 2024

Site visits made on 30 and 31 July 2024

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st November 2024

Costs application in relation to Appeal A Ref: APP/L3815/W/24/3341439
Land at Stubcroft Farm, Stubcroft Lane, East Wittering,
West Sussex PO20 8PU

- 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 Chichester District Council for a partial award of costs against Barratt David Wilson Homes.
- The appeal was against the refusal of planning permission for the erection of residential dwellings (including affordable housing), associated highway and landscape works, open space and flexible retail and community floorspace (Use Classes E and F).

Costs application in relation to Appeal B Ref: APP/L3815/W/24/3341520
Land at Stubcroft Farm, Stubcroft Lane, East Wittering,
West Sussex PO20 8PU

- 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 Chichester District Council for a partial award of costs against Barratt David Wilson Homes.
- The appeal was against the refusal of planning permission for the construction of sheltered living accommodation.

Decisions

1. The application for an award of costs in both cases is refused.

Preliminary Matter

2. The application for costs was made in writing during the adjournment and before the resumption of the public inquiry on 3 October. The appellants have also responded in writing. I will refer to the applicant for costs as "the Council" and the defendants as "the appellants".

Reasons

3. 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.

4. The PPG also confirms that the aim of the costs regime is, amongst other things, to encourage all involved in the appeal process to behave in a reasonable way and to follow good practice. It is aimed at encouraging local

planning authorities to properly exercise their development management responsibilities as well as discouraging unnecessary appeals.

5. This partial application concerns the submission of evidence from the appellants with respect to flood risk. Specifically, this was a rebuttal proof of evidence and information appended to it which necessitated an adjournment. A Casework Management Conference (CMC) on 4 June 2024 had set out a timetable for the submission of proofs of evidence by 2 July, 4 weeks prior to the inquiry opening on 30 July as also required within the inquiries procedure rules[1]. There is no explicit provision for the submission of supplementary rebuttal proofs within the procedure rules or other appeal guidance. However sometimes they can be helpful.

6. Mr Pekbeken for the appellants had prepared a rebuttal (Y17) of the Council's flooding evidence by Mr Hird (Y08). The rebuttal included modelling by HR Wallingford (the HRW study) and was received on 16 July, roughly 2 weeks before the inquiry opened. The bespoke modelling developed for that work had not been previously considered by the Council's experts. It had also not been peer reviewed and the Environment Agency had not been given the opportunity of commenting upon it. At the request of the appellant, I adjourned the inquiry in order to allow for both of those consultations to be undertaken. The Council had resisted the adjournment and instead had prepared to carry on as best that they could. However, I considered that this could prevent the evidence being fully tested and therefore agreed to the adjournment.

7. The crux of this application is therefore the events that led to the submission of the HRW study only 2 weeks prior to the opening of the inquiry. The appellant's justification relates to how the data required in order for it to be undertaken, was not received in a timely manner.

8. The planning applications were refused on 27 September 2023. There had been engagement by the appellants with the Environment Agency prior to the applications being submitted and during the processing of them. On the date of refusal of the applications, the appellants had confirmed by email that some data had been received but they also requested 'model files'. Several rounds of correspondence were entered into between the appellant's experts, the Environment Agency and the Council. There appears to have been confusion as to who owned the modelling used and the data. When attempts were made to share the information, it did not work as some elements were still missing. Further modelling files were requested and then received in January 2024 but metadata files for wave overtopping and wave toe heights were still missing after what seems to be further confusion about ownership.

9. On 24 May the Council's Senior Planning Officer Ms Thatcher emailed the appellant's planning consultant Mr Cleveland referring to the rapidly approaching deadlines and the need for the "re-run modelling" relating to flooding. Mr Cleveland in response the same day stated that "our work is well underway and we are already engaging with the EA on this". He pointed out that they were "in the EA hands re timings". The missing files were not received however by the consultants carrying out the flood risk work for the appellants, until 30 May.

[1] The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000

10. At the Casework Management Conference on 4 June, the Inspector appointed at that stage, recorded nothing in their note specifically in relation to the preparation of the alternative modelling. I do note from Appendix C of Mr Pekbekeben's proof of evidence (Y01) that there had been a meeting between him and Mr Hird along with others who are described as "the Floodline team" regarding modelling, the previous day. At that point, the ongoing discussions appear to have been happening and were constructive. This was however by then only 4 weeks before the proofs of evidence were due to be submitted.

11. The appellant's consultant Mr Pekbeken clearly had to work hard to obtain the necessary information. It is disappointing to see how this seems to have been so difficult when important planning decisions are reliant upon such evidence. With the benefit of hindsight, it could have been helpful if these problems were raised at the CMC.

12. When Mr Hird submitted his proof of evidence (Y08) he refers to the expectation of site-specific flood-risk modelling from the appellant which had not yet been received. In a letter to the Planning Inspectorate dated 12 July, the Council raised concerns following what Mr Pekbeken had included in his proof of evidence about the stated intention of submitting a site specific flood risk assessment and/or an assessment of overtopping and tidal flooding from HR Wallingford. This letter was forwarded to the appellant's planning consultant Mr Cleveland responded on 16 July along with submitting Mr Pekbeken's rebuttal proof along with the HRW study.

13. There was therefore a period between 30 May and the deadline for the submission of proofs of evidence on 2 July where communications about the further evidence appears to have broken down. Furthermore, that period of around 5 weeks from when the appellants had all of the relevant modelling information, doesn't seem very long for such a complex piece of work to be undertaken in my view. There was little time by then to realistically obtain a peer review to verify the results prior to the opening of the inquiry.

14. Had all of the modelling information been provided earlier, the HRW study could have been prepared earlier. The appellant refers to the information being expected within 20 days rather than the 100 days that it actually took. If this had been submitted sooner, it could have made a significant difference, enabling a discussion between the main parties prior to the submission of proofs of evidence as well as potentially a peer review also being undertaken much earlier. This may have enabled the inquiry to continue albeit with a re-arranged time-table rather than an adjournment for several weeks.

Conclusion

15. The adjournment was necessary in order to properly test the evidence and in fairness to both main parties. The late submission of the HRW Study had directly resulted in the need for the adjournment but the delays in receiving the necessary background information were at least in part responsible for that.

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Andy Harwood

INSPECTOR