The Planning Inspectorate

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Your Ref:

Our Ref:
T/APP/A1910/A/95/260746/P7

Date:
30-OCT-1996

- 1 NOV 1996

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPLICATION FOR COSTS BY CHIPPERFIELD LAND COMPANY

1. I refer to the application for an award of costs on behalf of your client against the Dacorum Borough Council which was made at the inquiry held at the Council Offices, Civic Centre, Dacorum on 14 and 16 August 1996. The inquiry was in connection with an appeal by Chipperfield Lane Company Ltd against a refusal of planning permission on an application for 2 houses, 2 bungalows and access on land at the end of Marwood Close, Kings Langley. A copy of my appeal decision letter is enclosed.

THE APPLICATION FOR AN AWARD OF COSTS

2. In support of this application for a full award of costs it was said that Mr Gibbs had not approached the application or appeal in a reasonable manner, he had not consulted your client and his comments on the proposed development were confused. It was lamentable that the appeal reached me in the form that it did. The Local Planning Authority's corridors of argument were, when stripped away, irrelevant, confusing and misleading. Mr Gibbs completed the exercise by seeking to draw in personal matters of no relevance to the proposed development. The Council's whole approach was not to be recommended.

3. It was only due to last minute consultations with the Highway Authority that the highway objection was resolved. Had this matter been the subject of earlier consultation it could have been resolved then, even if it had been necessary to spend money on a traffic survey. As it was, the appellant's highway witness had been on notice to attend the inquiry until less than 24 hours before it commenced. There was no need for the witness to prepare or revise his statement. Paragraphs 26-28 of Annex 3 to Circular 8/93 (the Circular) advises, amongst other things, that a planning authority will be expected to have sought further details of an application if they are unclear about the applicant's intentions from the details supplied. A planning authority who have not sought such further detail may be regarded as acting unreasonably in refusing planning permission on the ground that insufficient detail has been

supplied. Mr King spoke to a planning officer at the Council but when, subsequently, the application was handed to Mr Gibbs there was no response to 4 further telephone calls. According to one point of view expressed by Mr Gibbs he would have liked to have seen a full level survey, but he did not ask for this information.

4. Turning to the matter of highways, reasons have never been given as to why the earlier approved sight line was not implemented. Either the proposed improvements are *de minimis*, in which case they are not necessary and it would be almost possible to consider the highway objection to be spurious, or it was proper to raise a highway objection, in which case the ability to deal with any deficiencies in the sight line have been in the Local Planning Authority's hands for between 15 and 25 years. Attention was drawn to the planning appeal reported in the 1991 issue of the Journal of Planning and Environment Law (1991.JPEL.1172.) and it was said that the Council had failed to substantiate their highway reasons for refusal by reference to traffic movements or accident statistics. Instead they had attempted to bolster this reason, by the back door, using environmental arguments.

5. Paragraph 12 of Annex 3 to the Circular advises that a planning authority will be at risk of an award of costs against them if they refuse a planning application which accords with material proposals or policies in the development plan and they are unable to show that there are any other material considerations supporting such a refusal. The proposed development conforms with the policies and guidelines of the development plan. The number of applications that the Council have to deal with over a year are no excuse for them acting unreasonably. This leaves the simple proposition that planning permission should not have been refused in the first place.

THE COUNCIL'S RESPONSE

6. At planning inquires each party generally bears their own costs and as paragraph 1 of Annex 1 to the Circular makes clear, the word "reasonable" bears its ordinary plain English meaning. The Appendix to this Circular sets out 11 examples of circumstances in which planning authorities are at risk of an award of costs against them. The Council do not fall foul of any of these.

7. Returning to the word "reasonable", it was said that this did not mean that the Council were required to act impeccably, but merely that they should not act unreasonably. The two terms stand far apart. The Local Planning Authority has to deal with a vast number of planning applications and attempt to determine them in an 8 week period. References have been made to Mr Gibbs' proof of evidence - not a lot of it has been complimentary. His evidence was extremely thorough, some may say too thorough, and everything was in there. It was more use than a skimpy proof requiring extensive cross examination.

8. Mr Gibbs made no effort to "rubbish" Mr Kings evidence. What was being expressed was a difference of opinion between experts. Mr King has an urban design qualification but this does not make him a better man. Mr Gibbs is not, however, a highway engineer and is not able to calculate precisely the damage that the proposed highway works will do to the embankments alongside Vicarage Lane, particularly in the short time he had to view the plans.

9. It was made clear in Mr Gibbs' summary report that the full level survey was not required and this was approved by his Development Control Manager. Mr Gibbs was

convinced, in his opinion, that 4 properties on the appeal site was a non-starter from the outset. The inquiry had the benefit of a concise coherent statement from Dr MacConnaill and the Inspector was urged to pay particular attention to her fears.

10. The appellant introduced late issues to the inquiry. The highway survey was introduced 2 days before the inquiry commenced. Nonetheless, the agreement reached on this matter led to time being saved and the appellant's highway witness was spared from attending the inquiry. As a consequence the appellant saved costs. The proposed changes to layout and levels were not introduced until the second day of the inquiry and have cost the Council extra time and expense in dealing with them.

11. On the question of the highway reason for refusal this was based on objective grounds and could not be the subject of criticism in terms of the Circular. Mr Speller wrote to the appellant's highway consultant on 15 February 1996 when he stated that he was disappointed to learn that the appellant did not intend to investigate the possibilities of improving sight lines at this junction and had proceeded directly to the inquiry stage. The appellant's grounds of appeal contain no suggestion that it was accepted that the access required amendment.

12. The Council on the other hand maintained their case from the outset and introduced no new material. Their pre-inquiry statement was submitted on time whereas the appellant's pre-inquiry statement was not submitted until 20 May, 9 weeks later. Mr King accepted that the Council were not required "to get back to him" after his initial conversation with the officer then dealing with the application. Furthermore, he accepted that he had been kept informed of the dialogue between Mr Gibbs and Mr Speller.

13. The Council treated the inquiry seriously and have been thorough in providing copies of proofs and documents for ease of reference to the public. The application for the award of costs should therefore be dismissed.

MY CONCLUSIONS

14. The application for costs falls to be determined in accordance with the advice contained in Circular 8/93 and all relevant circumstances of the appeal, irrespective of its outcome, and costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

15. It was said that the Council's failure to properly consult or seek further information was unreasonable and led to your clients incurring unnecessary expense in two respects. The first related to the highway reason for refusal. Both parties acknowledge that the visibility at this junction is sub-standard when judged against the relevant guidelines in Planning Policy Guidance 13: *Transport*. It appears that your client's highway consultants were retained to assess the junction in November 1995. The results of this assessment were presumably available at the time the appeal application was made or shortly thereafter. Whilst it is true that the Council did not request this information it is also true that you did not volunteer it. Once the application had been refused, discussions took place and the Council confirmed that there was a large discrepancy in the various speed readings. Nonetheless you continued to say, as late as May 1996 in your pre-inquiry statement, that the junction was suitable to accommodate the modest amount of additional traffic that would result from the proposed development. It was only in June 1996 that the joint speed surveys were undertaken and it was only a matter of days before the inquiry that details of the proposed improvements were provided.

16. There certainly was delay in resolving this matter. However, the reason for refusal was soundly based and a proper assessment of the junction could not be made until speed readings had been agreed. This matter rested in your client's hands for some 3 months before it was dealt with. I do not accept, therefore, that this delay can be laid entirely at the Council's door.

17. It was said that any deficiencies in visibility at this junction could have been remedied by the Council pursuant to an earlier planning permission. That may be so. However, the Council became aware of these deficiencies as a result of considering your clients proposals. I do not consider it unreasonable of them, in the knowledge that these proposals would generate some additional traffic, to seek to achieve the necessary improvements as part of the appeal scheme.

18. Secondly, it was said that Local Planning Authority's failure to ask for a level survey was unreasonable. The Local Planning Authority's witness made it clear in his initial report on the appeal and, ultimately, under cross examination, that a level survey was not necessary for him to carry out a proper assessment of that scheme. He is an experienced planning officer and I do not consider it unreasonable of him to come to that conclusion. I conclude therefore that the Council were not unclear about your client's intentions and did not refuse the application on the grounds that insufficient information was provided. They did not therefore act unreasonably in terms of paragraphs 26-28 of Annex A to the Costs Circular.

19. You say that your clients proposals are in accordance with the relevant development plan policies. However, the interpretation of the policies on which this appeal turns involves the exercise of judgement. These policies are not prescriptive. It is not disputed that housing is appropriate on the site, the points at issue are whether the proposals would respect the character of the area, whether they would harm the living conditions of the occupants of adjoining properties and whether they would result in unacceptable living conditions for the occupiers of the proposed dwellings. It is possible for there to be a genuine difference of professional opinion over such matters. The Council clearly had full and explicit regard to the relevant development plan policies in arriving at their decision. Although I have come to a different view, it was not unreasonable for the Council to arrive at the decision it did in the manner it did. I conclude therefore that the Council did not act unreasonably in terms of paragraph 12 of Annex 3 to the Costs Circular. I therefore conclude that your application for an award of costs is not justified.

FORMAL DECISION

20. For the above reasons, and in exercise of the powers transferred to me, I hereby refuse the application by Chipperfield Land Company Ltd for an award of costs against the Dacorum Borough Council.

Yours faithfully

R J YUILLE MSc DipTP MRTPI
Inspector

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