

Costs Decision

Site visit made on 27 February 2017

by **Graham Chamberlain BA MSc MRTPI**

Decision date: 17th March 2017

Costs application in relation to Appeal Ref: APP/H3510/W/16/3162838 Coopers Cottage, 42 Mill Road, Lakenheath, Suffolk IP27 9DU

- 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 Mr David Wells for a full award of costs against Forest Heath District Council.
 - The appeal was against the refusal of planning permission for the construction of a pair of town houses with associated car parking and access arrangements.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Irrespective of the outcome of the appeal, the National Planning Practice Guidance (PPG) states that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The appellant has suggested that the process to date has been lengthy at approximately 15 months with around 10 months of this being pre application discussions with the Council followed by its determination of the planning application. Nevertheless, pre application discussions, whilst useful, are not compulsory. Moreover, the Council's decision, whilst outside the eight week timeframe, was still reasonably close to the 8 week target date¹ and the appellant could have exercised his right to appeal against the non-determination of the application. As such, the timeframe is not a ground that justifies an award of costs in this instance.
4. Lakenheath Parish Council (LPC) was consulted on the planning application and submitted representations. A number of material considerations were raised by LPC for consideration by the Council, which included a concern that the proposal would result in future occupants overlooking the playground and this may have some implications for the safeguarding of pupils. These points were all put to the planning committee and debated. It was for the decision takers at the Council to afford the material considerations before them the weight they considered to be justified based on the available evidence.
5. It ultimately transpired that the reasons for refusal related to the effect of the proposal on the character and appearance of the area. The Council did not refuse

¹ Which I understand was the of 26 September 2016

the proposal based on the perceived safeguarding issue. This is demonstrated in the minute of the meeting and reflected in the reasons for refusal. The Council's planning committee members did not make a substantive or procedural error in debating the safeguarding issue raised by LPC. On the contrary, it would have been a significant failing not to, as the committee had a duty to properly debate the concerns raised by LPC as this was a matter put to them.

6. The appellant suggests that the reason for refusal had been prompted by Officers to steer members of the planning committee away from reasons for refusal that would not have been valid. Having read the official minute of the meeting I am not satisfied this was the case. Following a discussion, which included advice from a planning officer, Cllr Cole moved a motion that the proposal be refused on design grounds alone. Whilst I accept the minute is not a full record of the discussion, it nevertheless demonstrates that the design concerns originated from the members. There is no substantive evidence before me to suggest the reason for refusal was in some way contrived as a means of refusing the application because other reasons would not stand up to scrutiny.
7. The members of the Council's planning committee took a decision contrary to the recommendation of planning officers. They were entitled to do this as they have their own experience and local knowledge and are thus well placed to apply their own planning judgment. However, there is not an unqualified remit to set aside the recommendations of professional planning officers. Instead, the committee members must be able to advance a rational and evidenced case to support their conclusions. The Council's submissions achieved this by referring to specific concerns, such as the design of the proposed roofs and the height of the dwellings. These concerns are rooted in local planning policy. Consequently, the Council were not being unnecessarily perspective in reaching the conclusion it did.
8. Officer's may have suggested the mansard roof as a design solution during pre-application discussions but this would have been an officer level opinion, which is not something that otherwise binds the Council as a Local Planning Authority to a particular course of action. Moreover, the appellant was not duty bound to follow the advice of the Council's planning officer and it is unclear in what context this advice was given.
9. The Council submitted its appeal statement after the deadline due to an apparent oversight in not reallocating the case when the original officer went on a period of extended leave. Whilst this is a procedural failing it did not prove significant in this instance, as a statement was submitted in a timely fashion when the error was identified. Moreover, the appellant was afforded an opportunity to provide further representations on the Council's statement. The slight delay did not result in any additional work for the appellant and it did not ultimately delay the overall timescales set out for considering the appeal. As such, this procedural failing did not result in unnecessary or wasted expense.
10. In conclusion, the Council did not act unreasonably in how it considered the planning application or its actions during the appeal process. For the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Graham Chamberlain,
INSPECTOR