
Costs Decision

Site visit made on 24 April 2017

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 11th May 2017

Costs application in relation to Appeal Ref: APP/P1560/W/17/3166412 Holland House, Green End Lane, Great Holland, Essex CO13 0JA

- 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 & Mrs R Newton for a partial award of costs against Tendring District Council.
 - The appeal was against the refusal of planning permission for a detached dwelling fronting Green End Lane within part garden to Holland House.
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Decision

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

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 planning application was refused by the Council on two grounds - the effect on the character and appearance of the area and the effect on highway safety, in particular the absence of adequate visibility splays, which would be compounded by the absence of adequate turning facilities. The Council had arrived at this conclusion following a submission from the Highway Authority.
4. In response to the Highway Authority's concerns the appellants amended the proposal by narrowing the vehicular access, enlarging the plot and by demonstrating that visibility splays could be provided on land within their control. The revisions were set out on drawing NHH-01 Revision E. Email correspondence between the Council's Planning Officer and the appellants demonstrates that the revised drawing was received by the Council and its decision was based upon its contents. It is therefore difficult to reconcile the Council's most recent statement that they have no record of the revised drawing when there is email correspondence to the contrary. Neither the decision notice nor the Officer's report includes a list of the drawings considered by the Council which could have clarified this matter.
5. I note that the Officer's report refers to the proposed dwelling being 1.5m from the boundary of the appeal site but on the balance of the evidence provided, I consider this to be an error and not the Officer's clear confirmation that drawing NHH-01 Revision E was the drawing upon which the assessment was made. Drawing NHH-01 Revision E may not have been subject to public

consultation but this is a matter for the Council to address upon receipt. The lack of public consultation does not mean the drawing is not part of the appellant's planning application once it was accepted by the Council.

6. The Council failed to re-consult the Highway Authority (HA). Instead, the Council arrived at a decision having regard to the HA's original comments. This is a substantive failure in light of the material changes made to the appeal scheme and the additional information shown on the revised drawing.
7. The Council's Planning Officer suggested in email correspondence that *'even if they (the HA) approved it from a highways perspective it would still be a refusal which wouldn't make a strong difference'*. I do not share this conclusion because Paragraph 49 of the PPG states that a Local Planning Authority should work to narrow the issues being considered and thus reduce the expense associated with an appeal. Therefore, whilst the application may still have been refused on grounds relating to character and appearance, the Council should have properly considered the highway safety impacts of the proposal and not relied on outdated comments from the HA. As such, the costs associated with this part of the appeal proceedings could have been avoided. Moreover, the Council did not seek to clarify the HA's view on the revised drawing when preparing its appeal statement.
8. The failure to re-consult the HA, but accept an amended drawing that addresses many of their concerns, is a substantive failure that led to a partially unreasonable decision. This is especially so because the Council were relying on the HA's comments as the substance of their case. As such, the Council have failed to properly substantiate each of its reasons for refusal. It is also important to note that the Council do not appear to have given proper consideration to the use of a planning condition as a means of addressing its highway safety concerns and it failed to respond to my question in respect of this when asked. This has compounded the original failings.

Conclusion

9. My overall conclusion is that in this instance the Council acted unreasonably in refusing the appeal scheme on highway safety grounds. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, 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 Tendring District Council shall pay to Mr & Mrs R Newton, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the highway safety refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Tendring 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.

Graham Chamberlain,
INSPECTOR