
Costs Decision

Hearing Held on 6 June 2017

Site visit made on 6 June 2017

by Richard Aston BSc (Hons) DipTP MRTPI

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

Decision date: 6th July 2017

Costs application in relation to Appeal Ref: APP/B1550/W/16/3162052 Ashingdon Hall, Church Road, Ashingdon, Essex, SS4 3HY

- 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 Ms Maureen Stewart (c/o Mavis Wood Ltd) for a full award of costs against Rochford District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for single storey extension to existing building to create self- contained, state of the art, 15 bedroom dementia facility.
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Decision

1. The application for a full award of costs is refused but a partial award of costs is allowed.

The submissions on behalf of Ms Maureen Stewart

2. The appellant contends that the Council: 1) failed to produce evidence to substantiate their case; 2) provided vague, generalised and inaccurate assertions that were unsupported by objective analysis; and 3) have not determined similar cases in a similar manner.
3. In relation to the first reason for refusal the Council failed to carry out the appropriate policy test in considering whether very special circumstances existed as this issue was at the heart of the appellant's case from the beginning. The Council avoided dealing with the policy test altogether and this resulted in a consequent failing to substantiate the case at appeal. This resulted in wasted time and unnecessary expense. Furthermore, there was a failure to engage on such matters which has led to the Hearing taking place.
4. In terms of reason for refusal 2, the Council never substantiated the highway objection with any evidence at all, of any kind, whatsoever. The allegations on transport are so vague that they could not be sensibly responded to and that the key test in the National Planning Policy Framework ('the Framework'), the 'severe' impact test has been completely ignored.
5. This was unreasonable and resulted in unnecessary expense in commissioning the appeal statement and the Intermodal Transportation Transport Statement. Furthermore, that the Council failed to determine the application consistent with the refusal of a previous scheme at the appeal site in 2014.

The response on behalf of Rochford District Council

6. The Council's response was simply to state that the reasons for refusal were sound reasons based on the development plan and the Framework.

The final response on behalf of Ms Maureen Stewart

7. The costs application does not question that the reasons for refusal are sound, it is because they have not been evidenced. The policies have been inconsistently applied and not supported by any objective analysis.

Reasons

8. The Planning Practice Guidance ('the PPG') advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
9. Importantly, it encourages local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case and not to add to development costs through avoidable delay. For clarity, I have dealt with each reason in turn.

Reason 1

10. Having found the proposal to be inappropriate, the failure of the Council to consider whether this harm was clearly outweighed by other considerations amounts to a complete failure to engage with the correct policy tests within the Framework, which is a significant material planning consideration. At no point within the committee report is consideration given to this and in the Council's statement at paragraph 5.4 the test within the Framework is mentioned but not considered any further even though other considerations had been a central plank of the applicant's case. Therefore the statement from Mr Davis on behalf of the Council that the reasons were based on the development plan and the Framework is simply not the case and it was only at the Hearing that the Council's position on such matters became clearer. In my view, this amounted to unreasonable behaviour.
11. Turning to whether this has caused the appellant unnecessary or wasted expense, a significant part of the Hearing was spent on Green Belt issues, including the need for the proposal and other related matters which, given that the application was being considered *de novo*, would have had to have been considered in any event. The appellant would have also had to include consideration of such matters when preparing the appeal, mindful that the matter would need to be addressed given my own inevitable questions in this regard. Consequently, although the Council's behaviour was unreasonable the dispute is one which could have only been resolved at appeal and the unreasonable behaviour of the Council has not resulted in unnecessary or wasted expense.

Reason 2

12. The relevant minutes do not show any consideration or discussion of the member's concerns. From my consideration and assessment of this reason there is no basis for supporting this view with the Council's representative even stating he "*did not know why members took the view*".
13. In support of the second reason for refusal the Council relied solely on the judgement of Mr. Davis. Whilst I accept that Mr. Davis is an experienced officer whose judgement carries weight, I do not accept that on a matter such as this, it was sufficient to rely on judgement alone. The Council cannot simply rely on a subjective judgement given the technical aspects of this issue. The reason for refusal was not substantiated and I find the allegations made in the Council's statement and at the Hearing to be vague, generalised and unsupported by any objective analysis.
14. I am mindful that there were third party objections on these grounds and it was a therefore a matter which the appellant may needed to have commented briefly on at the Hearing. However, the additional study is a substantial body of work. It is highly doubtful that the appellant would have gone to such lengths to counter the objections from third parties, particularly as the Council's highways officer had raised no objections in principle to the planning application.
15. I am mindful that the Council had also not raised these concerns in refusing a previous outline application¹. There is no requirement for members of the committee to follow this recommendation but, as set out in the PPG the Council must be able to justify its reason for taking a contrary view. In this case I have no evidence from the Council that adequately demonstrates why such a view should not equally have applied to the appeal proposal. In my view, the Council have not determined similar cases in a like for like manner and have not adequately justified or explained the reasons why. Overall, I find that the evidence before me does not provide a reasonable basis for the Council's stance.
16. For these reasons I conclude that unreasonable behaviour has been demonstrated on all 3 grounds advanced by the applicant in relation to this reason. This caused the appellant the expense of engaging an expert to prepare evidence and the appellant's planning witness and advocate have also had to spend some time dealing with it. These costs were unnecessary.
17. Although the PPG makes it clear that, as a matter of good practice, and where circumstances allow, costs applications should be made in writing before the Hearing, the oral submission in this case does not provide strong grounds to resist the application, given the relative simplicity of the argument. The application was made in a timely fashion, before the Hearing closed. I am satisfied therefore that the tests in the PPG for an award of costs, partial in this case, have been met.
18. I therefore find that unreasonable behaviour, on substantive grounds, resulting in unnecessary expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified in relation to this reason only.

¹ 14/00233/OUT

Costs Order

19. 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 Rochford District Council shall pay to Ms Maureen Stewart (c/o Mavis Wood Ltd), the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the Council's second reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
20. The applicant is now invited to submit to Rochford 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.

Richard Aston

INSPECTOR