

Costs Decisions

Site visit made on 13 June 2017

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

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

Decision date: 18 July 2017

**Costs application A in relation to Appeal Ref: APP/P1560/W/17/3168892
Land known as the Brambles, St Michaels Road, Thorpe le Soken CO16 0EJ**

- 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 and Mrs Andy Joslin and Mr David C Haws for a partial award of costs against Tendring District Council.
- The appeal was made against the refusal of planning permission for residential development of 0.30ha of land to provide 2 detached dwellings.

**Costs application B in relation to Appeal Ref: APP/P1560/W/17/3168892
Land known as the Brambles, St Michaels Road, Thorpe le Soken CO16 0EJ**

- 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 and Mrs Andy Joslin and Mr David C Haws for a partial award of costs against Essex County Council.
 - The appeal was made against the refusal of planning permission for residential development of 0.30ha of land to provide 2 detached dwellings.
-

Decisions

1. Application A for a partial award of costs is allowed in the terms set out below.
2. Application B for a partial award of costs is allowed in the terms set out below.

Reasons

3. 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. The applicant considers that the District Council has acted unreasonably in not substantiating its position in respect of the effect of the proposal on protected trees and the landscape. The applicant also considers that the County Council has introduced two new matters in its appeal statement.

Application A

4. The District Council argues that its position in relation to the effect of the proposal on protected trees was clearly explained in the officer's report and the first reason for refusal. However, on the matter of trees, the planning officer's report relies on the consultation response from the Council's Tree and Landscape Officer. That response does not find that the proposal would have a
-

harmful effect on protected trees. The planning officer's report goes on to assert that the proposal would result in considerable harm to the character and appearance of the area. However, this is not supported by any substantive analysis of the existing character of the area or the effect of the proposal on it. Consequently, I consider that the Council has not adequately substantiated the first reason for refusal as required by PPG paragraph reference ID: 16-049-20140306.

5. 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

6. 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 and Mrs Andy Joslin and Mr David C Haws the costs of the appeal proceedings limited to those costs incurred in dealing with the first reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
7. 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.

Application B

8. Where a local planning authority has relied on the advice of a statutory consultee in refusing an application, the consultee may make written representations to substantiate its advice as an interested party. This happened in this case, which makes the County Council a party to the appeal. When the statutory consultee is a party to the appeal, they may be liable to an award of costs to or against them¹.
9. The second reason for refusal is framed in terms of the capacity of the roads serving the site to accommodate the traffic generated by the appeal proposal but does not refer specifically to visibility splays. The County Council's appeal statement refers to the need for adequate visibility splays at the site access and goes on to state that the proposal would not provide such splays without the removal of part of an existing hedge. However, it does not allege that the appeal should be dismissed on this basis and, indeed, suggests a condition to secure the provision of visibility splays. Consequently, I am not persuaded that the County Council has introduced a new issue in this respect or that the applicant incurred unnecessary expense in dealing the matter.
10. The County Council's consultation response on the application does refer to the issue of precedent in relation to highways matters. However, the District Council, as the decision making authority at the application stage, chose not to include it in the second reason for refusal. The applicant was entitled to regard the reasons for refusal in the decision notice as a full and precise explanation of the Council's position and, therefore, the matters to be dealt with in the appeal.

¹ See PPG paragraph reference ID: 16-055-20140306

Since the District Council did not rely on the County Council's advice on the issue of precedent in its determination of the application, I consider that it was inappropriate for the County Council to re-introduce the matter in its evidence at the appeal stage. The County Council's statement included fairly extensive information on the issue of precedent and it is understandable that the applicant considered it necessary to respond.

11. 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

12. 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 Essex County Council shall pay to Mr and Mrs Andy Joslin and Mr David C Haws the costs of the appeal proceedings limited to those costs incurred in dealing with the issue of precedent in relation to highways matters; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
13. The applicant is now invited to submit to Essex County 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.

Simon Warder

INSPECTOR