
Costs Decisions

Site visit made on 11 June 2019

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 August 2019

Costs application A in relation to Appeal Ref: APP/M4320/W/19/3220771 Land West Of Damfield Lane, Maghull, Merseyside L31 3EL

- 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 Romansummer Associates Ltd for a full award of costs against Sefton Metropolitan Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the erection of 14 x 4 bedroom detached dwellings with garages, driveways, private gardens, bin stores, communal landscaping with pond feature and means of enclosure, a sustainable drainage system (SUDS), and a managed access open space / educational / ecological enhancement zone (with pond and dipping platform) / nature trail (with associated paths, viewing platforms and interpretation boards), all to be accessed from a new single point of access via Damfield Lane.
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Costs application B in relation to Appeal Ref: APP/M4320/W/19/3220771 Land West Of Damfield Lane, Maghull, Merseyside L31 3EL

- 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 Sefton Metropolitan Borough Council for a partial award of costs against Romansummer Associates Ltd.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the erection of 14 x 4 bedroom detached dwellings with garages, driveways, private gardens, bin stores, communal landscaping with pond feature and means of enclosure, a sustainable drainage system (SUDS), and a managed access open space / educational / ecological enhancement zone (with pond and dipping platform) / nature trail (with associated paths, viewing platforms and interpretation boards), all to be accessed from a new single point of access via Damfield Lane.
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Decisions

1. Application A for a full award of costs is refused.
2. Application B for a partial award of costs is refused.

Reasons

3. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

Application A

4. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. The PPG states that the circumstances when the behaviour of a local planning authority might lead to an award of costs can either be procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal.
5. The appellant's case is essentially that the Council, through its Planning Committee, resolved to refuse the application against the advice of its officers on highly spurious grounds, based on vague, inaccurate assertions, which were then fundamentally changed three weeks later at a subsequent committee meeting. The appellant contends the Council's actions left it no option but to make an appeal which could and should have been avoided.
6. The alleged procedural issues surrounding the January and February committee meetings occurred during the application process rather than the appeal process. For costs to be awarded, it must be demonstrated that the Council has behaved unreasonably in relation to procedural matters at the appeal. I have no substantive evidence that the Council has not adhered to the procedural aspects of the appeal.
7. I appreciate the appellant was frustrated by the events at the two planning committees, having expected a favourable outcome based on the officer recommendation to approve. Nonetheless, the Council is not duty bound to follow the advice of its professional officers, but if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
8. The appellant suggests the Council, in refusing the application on the grounds of harm to designated heritage assets and overall harm to the character and appearance of the area, ignored the advice of its Conservation Officer and Historic England, and failed to have regard to the submissions of the appellant's heritage specialist.
9. The Council, however, explains its position with respect to heritage matters at paragraphs 3.8 to 3.12 of its appeal statement. The paragraphs provide analysis of the elements of the proposal it considers would cause harm, namely through the loss of existing trees, boundary wall and the characteristic openness of the site, and refers to conflict with specific planning policies. Even though I have not agreed with the Council in my Decision, the consideration of the proposal in terms of its effect on the character and appearance of the area, and the effect on the significance of designated heritage assets, involves matters of judgement which encompass necessarily subjective elements. The Council has provided evidence to support its first putative reason for refusal. Based on the information before me, I do not consider that the Council has acted unreasonably in these respects.
10. In terms of the second putative reason for refusal, the conflict with Policy HC3 arises only where conflict is found with other policies. In truth, this policy could have been included in the first reason for refusal. However, the wording is clear that the conflict is predicated on there being conflict with other policies, and on

my reading of Policy HC3, that was correct. As such, the inclusion of this putative reason for refusal, though somewhat unnecessary as a separate reason, was not unreasonable. In any event, I note that the Council's position appears to have been well understood by the appellant, who comments only briefly on it at final comments stage.

11. I appreciate that the appellant's initial statement of case responds in detail to the putative reasons for refusal recorded in the minutes of the 16 January committee. However, based on the timeline of events documented in the Council's response to the appellant's claim, which are not disputed, the appellant was aware that Council officers were to bring the application back to the Planning Committee on 6 February to confirm the putative reasons for refusal. Given the appellant submitted the statement of case on 5 February, it seems it would have been possible and would have assisted the appellant to wait until after the 6 February meeting as it would have potentially avoided the need to spend time preparing arguments on certain matters.
12. The other matter raised by the appellant relates to the Council's production of evidence in its statement of case relating to financial contributions towards education. In an appeal against non-determination, the Council's statement of case represents the first opportunity for it to set out its position. Given the legal tests¹ to be met in considering whether a planning obligation should be taken into consideration it was not unreasonable behaviour by the Council to evidence its position at this stage, nor was it unreasonable for the appellant to have to respond to it.
13. Ultimately, the Council has clarified its position and set out the putative reasons for refusal in its statement of case, no later than would otherwise be the case in an appeal against non-determination. The appellant has had the opportunity to respond to the position ultimately taken by the Council at appeal. Therefore, on the evidence before me, I do not find there was unreasonable behaviour by the Council or that there was unnecessary or wasted expense by the appellant at the appeal stage.

Application B

14. The Council's claim for a partial award of costs is that the appellant introduced significant new evidence at a late stage in the appeal, beyond the time limits set out in the appeals procedures. This evidence sought to challenge the Council's requirement for a financial contribution towards education infrastructure.
15. The Council argues that the appellant had indicated a willingness to pay the contribution during the application process, and only sought to challenge it at appeal. It was open to the appellant, according to the Council, to challenge this at an earlier stage, as the evidence the appellant relies upon was available during the application. As a result of the timing of the appellant's evidence, the Council argues it has been put to unnecessary and wasted expense in defending its position on this issue.
16. In response, the appellant states that in correspondence to the Council in November and December 2018, during the application, made it clear that should the matter go to appeal, the appellant would seek to challenge the need

¹ Regulation 122(2) of the Community Infrastructure Levy Regulations 2010

for financial contributions. The appellant adds that the initial willingness to pay the contribution stemmed from a 'commercial decision' to bear its cost in order to see the application granted in a timely manner. The appellant further states that the timing of its evidence was dictated by the matter being raised in the Council's statement of case, which contained new evidence not previously presented to the appellant. It was entirely reasonable, in the appellant's view, to respond to this evidence in light of the aforementioned legal tests which must be met for any planning obligation to form part of the reason for granting planning permission.

17. Given the appeal was validated as a non-determination case, the appellant was required to submit their statement of case without precise knowledge of the grounds upon which the Council intended to defend the appeal. Accordingly, the appellant included arguments on a wide number of points, including responding to interested parties' concerns and matters relating to planning obligations. Given the type of appeal being followed, this was a reasonable course of action.
18. Whilst the Council criticises the appellant for not raising the issue of contributions toward education infrastructure sooner, it was not unreasonable for the appellant to provide evidence to counter that produced by the Council in its statement of case. The Council was afforded the opportunity to respond to this evidence during the appeal, as so was not disadvantaged by the timing of the evidence.
19. Overall, whether an education contribution was necessary was an issue which fell to be considered at appeal whether or not it had been a matter of contention between the parties at application stage, and based on the evidence before me, I do not find the appellant's actions unreasonable, and it follows that the Council was not put to unnecessary or wasted expense.

Conclusions

20. In respect of Application A made by Romansummer Associates Ltd against Sefton Metropolitan Borough Council, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. The application for the award of costs is, therefore, refused.
21. In terms of Application B made by the Council against Romansummer Associates Ltd, I conclude that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has not been demonstrated. The application for the award of costs is, therefore, refused.

K. Savage

INSPECTOR