



Costs Decision

Site visit made on 25 June 2019

by C Beeby BA (Hons) MIPROW

an Inspector appointed by the Secretary of State

Decision date: 7th November 2019

Costs application in relation to Appeal Ref: APP/U2615/W/19/3223483 Land Rear of St Marys Roman Catholic School, East Anglian Way, Gorleston, Great Yarmouth NR31 6TY

- 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 Edward Gilder for a full award of costs against Great Yarmouth Borough Council.
 - The appeal was against the refusal of planning permission for the extension of East Anglian Way and the construction of 71 dwellings, a car park and a drop-off point for the adjacent school; and construction access from Church Lane.
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Decision

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

Reasons

2. The Planning Practice Guidance ("the 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.
3. The PPG indicates that local planning authorities will be at risk of an award being made against them in the following circumstances:
 - If they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - If they fail to produce evidence to substantiate each reason for refusal on appeal; and
 - If they make vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The applicant contends that the Council's reason for refusal lacked an evidential basis, that the views of officers should have prevailed and hence that the proposal should have received permission.
5. The final committee report set out the differing views of the local highway authority and interested parties on highway matters. The subsequent minutes record concern amongst councillors regarding this main issue. Evidence before the councillors included their site visit at school collection time, the responses

- of the highway authority (a representative of which attended the committee meeting), and the representations of interested parties on the matter.
6. Alternative solutions were discussed at the meeting in respect of the main issue. The development plan policy with which conflict was identified is set out in the committee minutes. The Council's subsequent decision notice indicates at 2 points that it has found the evidence in support of the proposal on highway matters insufficient, and indeed its statement of case mentions the absence of evidence sufficient to lead it to an alternative conclusion.
 7. Thus, the Council's decision was based on a judgment of the likely harm which would result from the proposal, based on the available evidence. The Council is entitled to refuse permission where it concludes that the evidence does not demonstrate that any identified harm can be overcome, as it has done here. Thus, I consider that the Council made its decision with regard to the available evidence, and that it applied its adopted development plan policies to the proposal.
 8. Councillors were aware of the case officer recommendation to grant permission and of the highway authority's lack of objection to the proposal, subject to recommended conditions. However, the weight which should be given to these considerations was a matter for their discretion as decision makers. Planning authorities are not bound to accept the recommendations of officers and therefore councillors were entitled to reach an alternative view on the effect of the proposal on the main issue.
 9. Whilst I appreciate that the outcome of the application will have been a disappointment to the applicant, in view of these factors I consider that the Council did not act unreasonably in declining to approve the application.
 10. Turning to the Council's behaviour during the appeal process, its statement of case provides details of local highway conditions and current and predicted vehicular movements. It considers the effect of the school and concludes that its specific concerns relate to the proposal's effect on local highway capacity and the safety of more vulnerable highway users, including school children. Taking the limitations of the evidence before it into account, I have not identified vagueness or generalisation in the Council's analysis, which mentions the lack of objection of the highway authority at paragraph 6.11.
 11. Accordingly, I consider that the Council did not make vague, generalised or inaccurate assertions about the proposal's impact, and therefore did not act unreasonably in upholding its position on the application. Furthermore, limited additional evidence was forthcoming with the appeal and it follows that it is reasonable that the Council's own evidence, and its stance on the matter, was therefore largely unchanged within its appeal response. I therefore conclude that the Council did not fail to produce evidence to substantiate its reason for refusal on appeal.
 12. As the application for a full award of costs has not succeeded based on my above conclusions, I have considered whether only a partial award is justified. However, I have not identified unreasonable behaviour by the Council in respect of any particular aspect or part of the appeal process. Therefore I conclude that a partial award of costs is not justified.

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

C Beeby

INSPECTOR