



Costs Decision

Site visit made on 7 January 2020

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2020

Costs application in relation to Appeal Ref: APP/W3520/W/19/3237673 Land Between Taylors Farm & Playing Field, Straight Road, Battisford, Stowmarket IP14 2NB

- 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 Peter Rushbrook for a full award of costs against Mid Suffolk District Council.
 - The appeal was against the refusal of planning permission for change of use from agricultural to residential and erection of up to 8 no. dwellings and associated vehicular access.
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Decision

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

Reasons

2. 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. This application claims unreasonable behaviour by the Council in terms of not determining similar cases in a consistent manner, failing to consider a relevant appeal decision and unreasonably refusing planning permission on grounds that are capable of being dealt with by conditions.
3. In support of the appeal, reference is made to a planning permission granted by the Council in respect of housing on another site in Battisford. The Council has explained differences in the context to this other scheme and the appeal proposal as well as a subsequent change in the housing land supply position compared to that at the time of granting planning permission. The significant difference in circumstances mean it is not inconsistent or unreasonable for the Council to have refused planning permission for the appeal scheme, despite previously granting permission for housing elsewhere in the village.
4. It is claimed that the Council has failed to have regard to the Woolpit appeal¹ decision in which the Inspector found some development plan policies to be out-of-date. However, the Council officer's report sets out that the relevant development plan policies were adopted before the publication of the Framework and advises that the appeal development's conflict with these policies should be attributed reduced weight. Therefore, the evidence indicates

¹ Appeal ref no APP/W3520/W/18/3194926

that the Council have had regard to the Woolpit appeal Inspector's comments and have not acted unreasonably in this respect.

5. I have agreed with the refusal reason relating to contaminated land and therefore consider it reasonable for the Council to decide that a planning condition could not have been imposed to address this objection. However, the Council's concern in respect of highway safety fails to take into account that details of access is a reserved matter and there is no evidence that indicates the Council has considered whether their concerns could reasonably be dealt with by a condition. As such, the Council has acted unreasonably in refusing planning permission partly on highway grounds. Whilst there are other refusal reasons that would have meant an appeal being necessary, the appellant has been put to be unnecessary expense by having to respond to the Council's unreasonable behaviour in citing highway safety objections to the proposal.
6. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. A partial award of costs is justified to cover the expense incurred by contesting the Council's third reason for refusal relating to visibility splays and highway safety.

Costs Order

7. 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 Mid Suffolk District Council shall pay to Mr Peter Rushbrook, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the third Council refusal reason concerning visibility splays and highway safety and the development being contrary to the National Planning Policy Framework and policy T10 of the adopted Mid Suffolk Local Plan 1998; such costs to be assessed in the Senior Courts Costs Office if not agreed.
8. The applicant is now invited to submit to the 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.

Jonathan Edwards

INSPECTOR