



Costs Decision

Site visit made on 3 June 2020

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2020

Costs application in relation to Appeal Ref: APP/K2610/W/19/3242474 Hill House, Hall Lane, Drayton, Norwich NR8 6HH

- 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 B2016 Ltd for a full award of costs against Broadland District Council.
 - The appeal was against the refusal of an application for planning permission for the demolition of dwelling and erection of 56 bed nursing care home comprising two separate blocks of accommodation, new vehicular access and associated landscaping.
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Decision

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

Reasons

2. Planning Practice Guidance (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. Patently this is a two stage test. PPG also makes it clear that costs cannot be claimed for the period during the determination of the planning application although all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in determining whether or not costs should be awarded.
3. The crux of the applicant's claim stems from the fact that the appeal should, in their view, have been avoided since planning permission should have been granted. The Council's officers gave a positive recommendation for the scheme, a recommendation that was overturned by members of the Council's planning committee. There a number of strands to the applicant's arguments in this respect and I shall aim to address each matter in turn but there may be some overlap.
4. Firstly, it is perhaps important to point out that it is not unusual for the elected members of Council planning committees to go against the recommendation of their officers. Having seen records of discussion at the relevant committee I do acknowledge the curt, somewhat dismissive and arguably unhelpful conduct of some members in vocalising their clear opposition to the scheme. Their articulation of their reasons for refusal was not immediately clear but through

discussion with officers it became apparent the planning reasons for their views. The decision notice that was subsequently issued set that out with reference to policies of the development plan they considered relevant.

5. As is the case with committee overturns, this and any minutes/transcripts of discussions that took place are usually the first recorded documents made available. It is not necessarily my role to engage in a debate about how long this process can take or which document comes first. Suffice as to say however, and with regard to committee overturns, these are the key documents for any applicant to respond to when wishing to invoke their right to appeal.
6. As per due process for planning appeals, an appellant will not have sight of a detailed explanation of the Council's objections for a committee overturn case until they receive their written statement. This comes after the submission of the appellant's grounds which are set out with their first submission. A delegated refusal would of course be different since the appellant would have a report compiled by officers explaining their objections. For want of a better way of putting it, this is just a symptom of the process as it exists and one of the reasons why an appellant is given an opportunity to submit final comments before the Inspector determines the case if it is one determined by the written representations process as the one accompanying this decision has.
7. I note the applicant's concerns about the publication of the minutes for the relevant committee meeting. Evidently it would have been far more helpful had they been published sooner. It would have assisted the applicant in making their case. That said, the decision notice set out the Council's reasons for refusal. It is clear from the decision notice the main issues of the case and it refers to the development plan. This was, despite the unhelpful delay on the publication of the minutes, sufficient to make a start pending sight of the Council's statement of case which, as I have said, comes after the appellant's statement. Unhelpful does not necessarily translate to being unreasonable.
8. In respect of cited policies, I note that there were a number of such on the decision notice that were not discussed at the relevant committee. Be this as it may the substance of their objections were evidently not changed between the resolution and the publication of the decision notice. The latter being the record of the Council's decision in any event. I also note that such policies were listed on the committee reports as being relevant to the case. The applicant will have seen a copy of these reports at the time and in the Council's evidence for the appeal.
9. As part of their costs claim, the applicant has set out responses to merits of the appeal case, most of which is what form the Council's objections to the appeal scheme and on which I have given a view in the decision that accompanies this one. A view on these by both main parties is subjective and comes down to matters of planning judgement, which can and in this case do differ depending on stance. Arguably this is par for the course in an appeal situation. A contrary view is not grounds for a successful costs claim. Since I have rehearsed these arguments in my accompanying decision, I shall not investigate them further here.
10. The applicant infers the Council's evidence is light on the key matters of the case and in many areas unsubstantiated. However, and having seen their statement of case, I note they give a considered view on why they feel the

design and size of the building would be inappropriate and, in the context of the location of the appeal site, why the suggested solutions to make it locationally sustainable would not be appropriate. In some cases I have agreed with the Council's stance, in others not. This is an exercise of my planning judgement as an appointed Inspector. I do agree with the applicant on the limited information the Council have produced on local distinctiveness however, they have been clear on why they feel the appeal scheme would harm the character and appearance of the area more generally which was the mainstay of their objections in regard to that particular matter. This may have been general, but nevertheless sufficient to explain the substance of their case on the matter.

11. The applicant considers the refusal of planning permission erroneous. An outcome such as what came to pass can be frustrating and whilst I have some sympathy for them given the work that was evidently put into the scheme to get the support of officers, it is always possible for a planning committee to overturn a positive recommendation. In some areas the Council's evidence has been light but they have set out, when looking at their case as a whole, sufficient information to explain their views and why therefore they refused planning permission. It was then the applicant's right to appeal the decision, understanding the time, resources and effort that such entails. They chose to do so and this was of their own volition.

Conclusion

12. For the reasons I have set out above, I do not consider that there has been such behaviour by the Council in either their determination of the planning application or conduct during the appeal process so as to amount to unreasonable behaviour and the effects thereof as explained by PPG. An award of costs is accordingly refused.

John Morrison

INSPECTOR