
Costs Decision

Site visit made on 21 July 2020

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st August 2020

Costs application in relation to Appeal Ref: APP/V0510/W/20/3250652 Land opposite Innisfree, Bradley Road, Kirtling CB8 9JB

- 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 & Mrs G Harbinson for a full award of costs against East Cambridgeshire District Council.
 - The appeal was against the refusal of planning permission for erection of single-storey dwelling (self-build).
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Decision

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

Reasons

2. The Planning Practice Guidance 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. Moreover, Paragraph 049 of the PPG¹ indicates that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals.
3. In this instance, the applicants submit that the Council has acted unreasonably in that it did not determine similar cases in a consistent manner. Moreover, the applicants have identified a site opposite the appeal site where the Council granted permission for a dwelling.
4. In terms of the timeline of that decision and the appeal, I note that outline planning permission was originally approved for the site opposite by the Council's Planning Committee, contrary to officer recommendation, in 2017². The Council then refused permission³ for a Reserved Matters application, so a second application for outline planning permission was submitted to and granted by the Council⁴. Prior to that latter application, an application for a dwelling was refused permission at the appeal site⁵. The application, the subject of my main decision, was then submitted but was also refused permission by the Council.

¹ Reference ID: 16-049-20140306, Revision Date 06 03 2014.

² Planning Reference: 16/01170/OUT.

³ Planning Reference: 19/01369/RMA.

⁴ Planning Reference: 19/01715/OUT.

⁵ Planning Reference: 19/00189/FUL.

5. In my main decision, it is clear that I have arrived at a similar conclusion to the Council in respect of the location and accessibility of the appeal site. Moreover, I found that further development, such as that approved by the Council opposite, would add to unsustainable journeys made from that location, so would therefore be harmful. Nevertheless, the location of both developments is spatially identical.
6. I also accepted that the site opposite has characteristics that physically distinguish it from the appeal site, in terms of its appearance, which relate more to the Council's concerns in respect of the rural setting and character of the area.
7. The Council has suggested that the original application for the site opposite was granted at a time when the Council could not demonstrate five-years housing land supply, but this was also the case when the planning application for the appeal site was considered. The Council's Officer Report, Statement of Case and their rebuttal for this costs decision, all refer to other decisions and appeals where development has been resisted in the countryside, outside of development limits in the district. However, the Council has not provided any substantive evidence as to any material circumstances in respect of the accessibility of the location of the appeal site itself that may have changed their approach to the determination of applications to either side of Bradley Road.
8. Although I note that the previous application at the appeal site was refused permission, having seen a planning application for a similar proposal twice approved opposite the site, the applicants should have had a reasonable expectation that their proposal would have been treated similarly. The Council therefore clearly took an inconsistent approach when considering the impact of the location and accessibility of two very similar proposals in close proximity to one another, and within a relatively short period of time. This amounts to unreasonable behaviour.
9. Despite my findings in relation to the elements of the Council's reasoning in relation to the rural setting and character of the area, referred to above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated by the Council in respect of those parts of their reasons for refusal relating to the location of the site in the countryside and its accessibility to facilities and services. A partial award of costs is therefore justified.

Costs Order

10. 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 East Cambridgeshire District Council shall pay to Mr & Mrs G Harbinson, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting those parts of the reasons for refusal relating to the location of the site in the countryside and its accessibility to facilities and services.
11. The applicant is now invited to submit to East Cambridgeshire 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. In the event that the parties

cannot agree on the amount, the costs shall be assessed by the Senior Courts Costs Office.

Paul Thompson

INSPECTOR