
Costs Decision

Hearing Held on 9 September 2020

Site visit made on 9 September 2020

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2020

Costs application in relation to Appeal Ref: APP/W3520/W/19/3239991 Land adjacent: Greenbanks, Upper Street, Baylham, Suffolk IP6 8JR

- 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 Max Short for a full award of costs against Mid Suffolk District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for a development described as 'Erection of 4 affordable dwellings, access, landscaping and private drainage system'.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (PPG) states that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. During the hearing the Council confirmed that it no longer wished to contest two of the reasons for refusal listed on the decision notice. The PPG states that a local planning authority is at risk of an award of costs if it withdraws a reason for refusal. However, it can be an entirely appropriate course of action if the circumstances justify it. For example, if new evidence is presented.
4. In this instance, the Council 'withdrew' its fourth reason for refusal at the outset of the hearing. This is because the appellant had recently provided a planning obligation which would secure a financial contribution in accordance with the Suffolk Recreational Disturbance Avoidance and Mitigation Strategy. The Council were able to confirm that its legal team had reviewed the obligation and the evidence of title and were satisfied it had been properly drafted. In the circumstances, the Council acted clearly and promptly in response to the new submission and therefore I find no fault in this respect.
5. The Council also 'withdrew' its first reason for refusal following a lengthy discussion at the hearing. It did this after conceding at the hearing that it had erred on several points. In particular, it had mistakenly taken the view that the appeal scheme was proposing starter homes. This view was taken because

Officers did not understand that a 'Paragraph 71'¹ entry level exception scheme was being proposed, even though this was very clearly explained in the applicant's Planning Statement and confirmed in subsequent emails.

6. The Council also excepted that it had had a muddled approach to its own policies in stating that a rural exception scheme should be considered against Policy H5 of the LP², even though this policy has effectively been superseded by the more recently adopted Policy CS2 of the CS³, which includes a broader definition of what can constitute a rural exception site.
7. Notwithstanding these points, the Council also submitted that even if the proposal was in conflict with Policies H5 and CS2, the in-principle support provided by Paragraph 71 of the Framework would, in this instance, be a material consideration that would outweigh such a conflict. This is because these policies are out of date, in respect of this appeal, due to an absence of guidance on entry level affordable housing exception sites and therefore any conflict with them should carry much reduced weight.
8. The Council were right to 'withdraw' its first reason for refusal after accepting that it had been predicated on a flawed assessment. However, its revised position was not based on new evidence. The points made at the hearing were those set out in the applicant's Planning Statement, previous email correspondence with the Council and his appeal statement. Therefore, its highly likely the Council would have come to the conclusion it did at the hearing if it had properly assessed the proposal at the application stage, which could have included discussions with the applicant in order to understand the nature of the proposal. As such, the Council's first reason for refusal was unreasonable and the applicant has been put to unnecessary expense in contesting it.
9. The applicant makes a sound point in arguing that the flawed assessment which resulted in the first reason for refusal would have infected the Council's overall planning balance. He submits that the Council's failure to acknowledge the nature of the proposal as affordable housing meant that the public benefits were not properly balanced against the harm to the setting of St Peter's Church. This is a logical argument. However, it is common ground that the proposal would result in some harm to the setting of this designated heritage asset and therefore the applicant needed to make a case regarding public benefits. The weight ascribed to the benefits is a matter for the decision maker. Consequently, there is no guarantee the Council would have concluded differently on this matter had they properly considered the proposal as a scheme for affordable housing and, for the reason set out in my decision, it would not have been wrong if it concluded that the balance favoured refusal.
10. The Council's third reason for refusal is poorly and unreasonably constructed as it is not clear whether it is alleging that the proposal would harm Baylham Common as a heritage asset or that it is seeking to articulate a wider concern regarding the effect the proposal would have on the character and appearance of the area, including Baylham Common⁴.

¹ Paragraph 71 of the National Planning Policy Framework (the 'Framework') where entry level exception sites are defined and explained

² The Mid Suffolk Local Plan 1998 – Policy H5 states that a scheme proposing a rural exception site should be supported by a housing needs survey, the site must adjoin a settlement boundary and the proposal must be well located to services and facilities.

³ Mid Suffolk Core Strategy Development Plan Document 2008 (and the focussed Review 2012)

⁴ It also fails to refer to any development plan policy. It refers to landscape guidance, but this is not part of the development plan and is not a supplementary planning document

11. The Council confirmed through its statement of case that the reason for refusal should be interpreted as the latter. This is a reasonable interpretation when considering the Officer's delegated report. However, regardless of whether this was a new matter raised during the appeal, it nevertheless transpired that the effect on the character and appearance of the area is an important matter that required consideration as a main issue. The applicant had the opportunity to address this in good time through an addendum to his statement. Accordingly, the appellant has not been put to unnecessary expense in addressing the impact on the character and appearance of the area or having to do so at unreasonably short notice.
12. However, the specific reference in the Council's third reason for refusal to the effect on Baylham Common as a heritage asset has not been properly explained by the Council. It has not provided substantive evidence explaining the historic extent and nature of the common and how it is currently experienced as a discrete heritage asset. The Council's own landscape guidance explains that it exists in name only. The applicant made these points in the addendum to his statement of case, but the Council failed to respond, even though I invited it to do so. Accordingly, the Council has failed to produce adequate evidence to support a point outlined in a reason for refusal.
13. Moreover, this was a point recently addressed in a nearby appeal decision⁵. The Council has therefore persisted in objecting to a scheme on a matter that an Inspector has previously indicated to be acceptable, but without adducing new evidence or further clarification. This is unreasonable behavior that has resulted in the applicant bearing unnecessary expense in having to prepare a case addressing the alleged effect on Baylham Common as a heritage asset.

Costs Order

14. 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 Max Short the costs of the appeal proceedings described in the heading of this decision, but only in so far as they relate to contesting the Council's first reason for refusal and its third insofar as the alleged effect on Baylham Common as heritage asset; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to the Mid Suffolk 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.

Graham Chamberlain,
INSPECTOR

⁵ APP/W3520/W/19/3239991