
Costs Decision

Site visit made on 11 August 2020

by D M Young JP BSc (Hons) MA MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 28 September 2020

Costs application in relation to Appeal Ref: APP/X3540/W/19/3238214 Land at Mill House, Mill Street Middleton IP17 3NG

- 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 Mrs Rita Pateman for a full award of costs against East Suffolk Council.
 - The appeal was against the refusal of planning permission for the erection of dwelling and associated works, including provision of a new vehicular access.
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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, 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 or wasted expense in the appeal process.
3. The PPG also advises 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 planning applications, failing to produce evidence to substantiate each reason for refusal on appeal, use of vague, generalised or inaccurate assertions about a proposal's impact and refusing planning permission on a ground capable of being dealt with by condition.
4. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
5. The Applicant's claim is wide ranging and includes procedural and substantive elements. The principle grievance is that the Council did not engage positively during the application process and had it done so a number of the reasons for refusal would have fallen away. The Council has defended its handling of the application stating that its in-principle objection to the location of the appeal site outside the settlement boundary was supported by Policies SP29, DM3 and DM4. It argues that this was a clear material planning ground on which to refuse the application.
6. I do have several concerns about the Council's approach to the appeal scheme. Dealing with the main reason for refusal first, the Council's Officer Report failed

- to undertake any assessment of its development plan policies against the National Planning Policy Framework as required by the Wavendon Judgement¹. This omission is particularly glaring since these matters were covered in depth in the Applicant's Planning Statement².
7. Having had a second opportunity to address these matters at the appeal stage, the Council did little more than to assert its Development Plan was up-to-date. No substantive arguments were advanced to support that view and the Appellant's arguments regarding the consistency of Policy DM4 went unchallenged. I therefore find that the Council's failure to address the Applicant's arguments in respect of DM4 amounted to unreasonable behaviour.
 8. However, in addition to the in-principle objection, the Council also took the view in its second reason for refusal that the development would harm the character and appearance of the area. Although I have found in the Applicant's favour on the substantive merits of that issue, the reason for refusal set out in the decision notice was complete, precise and specific to the application. I do not find there was unreasonable behaviour on the part of the Council who were clearly entitled to exercise their judgement and to reach the conclusion they did in respect of landscape
 9. In respect of the third reason for refusal, the Council's approach is troubling. The layout plan was amended during the determination period. The Applicant has submitted the email chain between her agent and the Council's Development Management Technician which unequivocally shows the matter had been resolved on 15 July 2019. In view of that agreement, the Council's decision to refuse the application on highway grounds three days later was patently unreasonable.
 10. The Applicant alleges that she was not given the opportunity to address the fourth reason for refusal which relates to the RAMS mitigation. In effect this reason for refusal came as a surprise. In my view this matter should have been brought to the attention of the Applicant giving her suitable time to address the matter at the application stage. The applicant also refers to various errors on the Decision Notice. Whilst these errors are unfortunate, they do not amount to unreasonable behaviour.
 11. Overall, the Council's handling of the application was far from exemplary. Its approach to the first, third and fourth reasons for refusal was unreasonable for the reasons outlined above. Nonetheless, as the second reason for refusal was adequately substantiated, it is unlikely that the need for the appeal could have been avoided.
 12. I have considered whether the applicant has incurred unnecessary expense in relation to reasons one, three and four. However, the response to these matters at appeal was relatively straightforward and repeats the same arguments that were made in the original Planning Statement. They have not involved extra assessment, or indeed anything beyond a short rebuttal within other comments made on the Council's position. It seems to me that, in reality, there has been little extra work involved in responding to reasons one, three and four that it can be regarded as 'de minimis'. In effect the appellant

¹ Wavendon Properties v Secretary of State for Housing Communities Local Government and Milton Keynes Council [2019] EWHC 1524 (Admin).

² Paragraphs 11-30

has quickly and easily rebutted the Council's position without wasting expenditure.

13. As a result, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

D. M. Young

Inspector