



Costs Decision

Site visit made on 28 September 2020

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: Tuesday, 03 November 2020

Costs application in relation to Appeal Ref: APP/V0510/W/20/3254295 Land off Station Road, Wilburton, Ely CB6 3RP

- 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 BS Pell Trust for a full award of costs against East Cambridgeshire District Council.
 - The appeal was against the refusal of planning permission for residential development of 23 dwellings, new accesses, public footpath, parking and associated works (including removal of trees T10, T12, T14, T15, T16, G2 and T24)'.
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Decision

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

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.
3. The application for costs is in two parts. Firstly, in relation to procedural matters, the applicant alleges inconsistency by the Council, in particular, citing a reason for refusal concerning the integrity and long-term future of trees having previously indicated the proposed scheme would not compromise tree health. Secondly, with regards to substantive matters, it is the applicant's case that the Council were unreasonable for failing to take into account benefits of the proposed scheme, failing to have regard to the site's previous allocation within the Submitted Local Plan (2017) and for requiring an upfront archaeology excavation.
4. Turning to the procedural matters, I have concluded that the proposed development would compromise the integrity and long-term future of trees. I am mindful that the Council's tree officer had originally indicated no objection to the principle of the proposed scheme. However, further amendments to the proposal were made in an effort to overcome issues concerning the scheme's access and drainage. In my view, it was not unreasonable for the Council to reach a decision that was contrary to their earlier view in light of the changes to the scheme.
5. Similarly, whilst I understand the appellant's frustrations that the appeal site had been formerly allocated for development within the Submitted Local Plan (2017), this document was subsequently withdrawn and it provided no absolute guarantee of the appeal site's suitability for development. On that basis, it is appropriate to determine the appeal proposal with regard to the development plan that is in place and current at the time of an application for development.

Likewise, even though a previous scheme had solely required a desk top archaeology appraisal, this does not preclude a different approach being required at a future date particularly given that a significant amount of time had elapsed since the earlier application.

6. Even if the Council had failed to have proper regard to the benefits of the proposed scheme, I have had regard to these matters and have attributed weight to them in the planning balance. Consequently, I have concluded that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
7. Accordingly, I do not find that the Council have acted unreasonably. As such, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. An award of costs is therefore not justified.

E Brownless

INSPECTOR