
Costs Decision

Site visit made on 14 December 2020

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2020.

Costs application in relation to Appeal Ref: APP/W3520/W/20/3254926 10 Ipswich Road, Debenham, Suffolk IP14 6LB

- 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 Jason Vince of Earlswood Homes for a full award of costs against Mid Suffolk District Council.
 - The appeal was against the refusal of planning permission for a proposal described as 'demolition of existing bungalow and erection of 6no new dwellings'.
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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. In refusing the proposal due to concerns that Plots 1-3 would harm the privacy of the occupants of 12, 14 and 16 Ipswich Road (Nos 12-16), the Council was not being consistent with an earlier decision¹ it had made. This is because Plots 1-3 are broadly unchanged from that previously proposed and their impact had not featured as a reason for refusal in the earlier application. The Council had received additional evidence from the occupants of Nos 12-16 in respect of the revised scheme, but this is unlikely to have justified an entirely different conclusion. This is because the impacts on the occupants of Ipswich Road should have been properly considered and apparent in the first application.
4. The Council has also acted inconsistently in refusing the proposal due to concerns over the impact on the character and appearance of the area. This is because it did not have these concerns when considering the previous scheme, which proposed taller properties. The Council has failed to provide a proper explanation why it has come to a different finding. This is especially pertinent because Policy DEB2 of the Debenham Neighbourhood Plan 2016 – 2036 (NP) was part of the made plan when the Council arrived at its original decision.
5. In addition, the Council's second reason for refusal inferred rather than stated harm and was therefore vague. The Council also appears to have erroneously approached Policy DEB2 as a blanket ban on accommodation in the roof when

¹ DC/19/01771

the policy actually requires an assessment as to whether such development would be in keeping with the surrounding properties and area. The policy therefore has the underlying aim of safeguarding the character and appearance of the area. The Council failed to properly assess the effect of two and a half storey properties on the character and appearance of the area at both the application and appeal stages, and this is despite the analysis of the appellant. It was left to interested parties to make the case regarding the effect on the character and appearance of the area.

6. In determining a previous appeal² at the appeal site for eight homes, the Inspector came to no findings regarding the impact on the living conditions of Nos 12-16 and the character and appearance of the area. This is presumably because they were not points in dispute that required resolution and, because the appeal was dismissed for other reasons, the Inspector did not need to reach findings on them. Therefore, the Council have not departed from the findings of a previous Inspector. Nevertheless, they have acted inconsistently in departing from their own decision. Not determining similar cases in a consistent manner is a type of unreasonable behaviour listed in the PPG.
7. Had the Council properly considered the first application then it would not have needed to act in an inconsistent way when considering the second. The Council were correct to refuse the second application because it would be harmful. However, in so doing it acted inconsistently and thus unreasonably. This left the appellant in a very difficult and unclear position. Had the Council acted in a more consistent manner throughout the two applications then it's likely the appellant would have had adequate clarity and consequently the second appeal, and the costs associated with it, could have been avoided altogether.

Conclusion

8. In light of the above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has occurred and therefore a full award of costs is justified.

Costs Order

9. 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 Jason Vince of Earlswood Homes the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to 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

² APP/W3520/W/19/3240036