
Costs Decision

Hearing Held on 25 November 2020

Site visit made on 9 December 2020

by D.R McCreery MA BA (Hons) MRTPI

Decision date: 11 January 2021

Costs application in relation to Appeal Ref: APP/C1570/W/19/3242024 Land to the north of Stewarts Way, The Street, Manuden CM23 1DR

- 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 The Battlement Trust and W I Bampton for an award of costs against Uttlesford District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for outline application with all matters reserved except access, for up to 22 dwellings, including 40% affordable units. Provision for children's nursery/pre-school (Class D1), with associated car parking. Creation of vehicular and pedestrian access from The Street. Provision of public open spaces, play area, landscaping and Resource Centre. Provision of balancing pond and associated drainage infrastructure.
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Decision

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

The submissions for the Battlement Trust and W I Bampton

2. The costs application was submitted in writing. The following additional points were made orally at the hearing.
3. The Applicant considers that the Council has failed to justify their reason for refusal number 3 in relation to protected species. The Council failed to consider and respond to the Ecology Reports and mitigation produced by the Applicant which led to wasted expense at appeal.

The response by Uttlesford District Council

4. The Council's response was made in writing. The following additional points were made orally at the hearing.
5. The Council could not have responded to the Ecology Report and mitigation produced by the Applicant due to the lack of availability of internal expert colleagues.

Reasons

6. National Planning Policy Guidance (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.

7. In support of the appeal, the Applicant provided an updated Ecology Report aimed at addressing the issues raised by the Council relating to the badger sett. The Council provided no assessment of this information in their statement of case or at the hearing, including whether the Applicants proposed form of mitigation met their concerns.
8. I am sympathetic to the Council's lack of access to internal expert advice. However, the Applicant's report and suggested mitigation were clearly matters of relevance to the Council's case and were available for some time prior to the hearing. As such, the Council had a reasonable time to appraise the information and reach a judgement on it.
9. The lack of response indicates that the Council has failed to effectively review their case in relation to this matter and have not substantiated their reason for refusal. This amounts to unreasonable behaviour on the Council's part.
10. Given the substance of the mitigation and engagement that was undertaken with Natural England, the Applicant provided a clear way to address the issue relating to the badger sett.
11. As a result of the Council's unreasonable behaviour the Applicant wasted expense and time bringing this matter to the hearing and the evidence suggests that, on the balance of probabilities, the matter could have been addressed in advance of the hearing.
12. In relation to the Applicants written points, while they were entitled to consistent decision making from the Council it is also the case that the advice of the officer that the Applicant says led to them withdrawing a previous application could not have been regarded as binding.
13. Whilst there is some evidence of inconsistency, it is not strong enough to demonstrate that unreasonable behaviour has occurred based on the Applicants written submissions.
14. For the reasons set out above I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has been demonstrated in relation to the Ecology Report and mitigation of the badger sett.

Costs Order

15. 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 Uttlesford District Council shall pay the Battlement Trust and W I Bampton the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred due to the failure to justify their reason for refusal number in relation to protected species and respond to the Ecology Reports and mitigation produced by the Applicant.
16. The Applicant is now invited to submit to the 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.

17. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

D.R. McCreery

INSPECTOR