
Costs Decisions

Hearing Held on 15 December 2020

Site visit made on 16 December 2020

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2021

Costs application in relation to Appeal A Ref: APP/G2815/W/20/3254860 Glebe Farm, Land located off Morehay Lane, King's Cliffe

- 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 M C and J Day for a full award of costs against East Northants District Council.
 - The Hearing was in connection with an appeal against the refusal of planning permission for demolition of redundant farm building and proposed creation of agricultural worker's dwelling.
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Costs application in relation to Appeal B Ref: APP/G2815/W/20/3258402 Glebe Farm, Land located off Morehay Lane, King's Cliffe

- 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 M C and J Day for a full award of costs against East Northants District Council.
 - The Hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for demolition of redundant farm building and proposed creation of agricultural worker's dwelling.
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Decisions

1. The application for an award of costs in relation to Appeal A is refused, and the application for an award of costs in relation to Appeal B is refused.

The submissions for M C and J Day

2. A written application for costs was made in advance of the Hearing. It is not necessary for me to repeat here the points made in that written submission. An additional oral submission was made at the Hearing, where reference was made to various points that had been agreed/stated at the Hearing that, the applicant considers, could/should have affected the Council's determination of the original planning applications. These points include with respect to the degree to which there is confidence the enterprise, once diversified, would remain viable. An oral response to the Council's oral rebuttal was also made, where it was stated that the debate had clearly demonstrated that the most important policy for determining the appeals is out-of-date and that the Council should reasonably have also come to that view. The appeals, the applicant considers, could have been avoided through discussions between a willing Council and the applicant at planning application stage.

The response by East Northamptonshire District Council

3. A rebuttal to the Council's written costs applications was submitted in writing in advance of the Hearing. It is not necessary for me to repeat here the points made in that written submission. An oral rebuttal to the appellant's oral submission was made at the Hearing, where it was stated that the matters raised appeared to be a summation of what had been discussed at the Hearing rather than costs arguments. Further, the Council has not changed stance and continues to consider that an essential need for the proposed developments has not been demonstrated and that the presumption in favour of sustainable development has not been triggered. In addition, it was stated that any reference made during the Hearing to the most important policy for determining the appeals has not prejudiced the appellant's case.

Reasons

4. Planning Practice Guidance advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
5. The applicant has asserted that the Council failed to exercise its development management responsibilities in an appropriate manner and that the proposals should never have reached appeal stage. However, as will be seen from the decisions on the planning appeals that are the subjects of these applications, both were dismissed due to identified harm and associated policy conflict.
6. The applicant has referenced a lack of positive or helpful dialogue offered by the Council at planning application stage with respect to each appeal scheme. However, it is difficult to see how entering into meaningful or detailed dialogue could have realistically overcome the Council's in-principle objections, which were in-part related to the absence of a clearly established functional need and to associated conflict with the development plan. It must be noted that costs can only be awarded if unnecessary or wasted expense at appeal stage can be demonstrated.
7. Whilst it was only at the Hearing that the Council confirmed their agreement as regards the most important policy for determining the appeals, this did not prejudice the reasons given for refusing (or intending to refuse) planning permission. Indeed, as will be noted from the associated planning appeal decisions, I have found that the most important policy is not out-of-date.
8. In the case of each set of proposals, it would be possible for a planning condition to be imposed to limit the extend of external garden space. The National Planning Policy Framework (February 2019) (the Framework) sets out that local planning authorities should approach decisions on proposed development in a positive and creative way and should work proactively with applicants. The Council's apparent lack of engagement at planning application stage with respect to this garden area matter does not firmly align with the Framework's requirements with respect to decision-making.
9. Nevertheless, the Framework also promotes early engagement and notes that good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community. Pre

application advice was not pursued by the applicant in the case of each development proposal. This is also a relevant factor in my considerations.

10. The Council's primary responsibility would have been to review the plans submitted to them. Indeed, a plan setting out garden space at an extent agreed by the main parties was never, to my knowledge, produced. Whilst negotiations could have taken place (at planning application stage with respect to each proposal being considered), there is no certainty that agreement would have been reached.
11. With respect to the planning appeals, I have found that the proposed garden area, as revised under the proposal that is the subject of Appeal B, would not be excessively sized. However, I do not consider that the Council found harm in this regard unreasonably. Indeed, the garden's revised extent remains sizeable. Notwithstanding its apparent lack of proactive engagement at planning application stage, I find that the Council did not act unreasonably by imposing its second reason for refusing planning permission (in the case of Appeal A), nor by maintaining its objections in this respect as regards Appeal B.
12. I therefore conclude that, for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. It is not the case that the Council prevented development which should clearly have been permitted. Thus, having had regard to all other matters raised, an award of costs in relation to either Appeal A or Appeal B is not justified.

Andrew Smith

INSPECTOR