
Costs Decision

Site visit made on 7 April 2021

by S J Lee BA(Hons) MA MRPTI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2021

Costs application in relation to Appeal Ref: APP/K0235/W/20/3262253 Land North of High Street, Little Odell, Bedfordshire MK43 7AP

- 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 Bedfordshire Charitable Trust for a partial award of costs against Bedford Borough Council.
 - The appeal was against the refusal of planning permission for demolition of existing agricultural building and erection of a dwelling.
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Decision

1. The application for a partial award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) 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 PPG gives examples of what might be considered 'unreasonable behaviour', including a failure to substantiate each reason for refusal and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. The applicant considers the Council has exhibited such behaviour with regard to its third reason for refusal, which related to potential biodiversity impacts.
4. The first concern is that the Council failed to raise their concerns about biodiversity with the appellant or ask for further information prior to the decision being made. The Council contend that as they had in-principle objections to the development, asking the applicant for further information would have been moot as it would not have altered their decision. The Council argue that asking the appellant for additional information would have meant additional delays and expense for no reason. From the evidence before me, it seems clear that with or without the biodiversity concerns, the Council had a fundamental objection to a new dwelling in this location. The biodiversity issue was not determinative, and the application would have been refused in any event. The appeal would therefore still have been necessary.
5. I accept it may be frustrating for reasons for refusal to be introduced without any prior warning or discussion. It would have been preferable for the Council to have made their concerns known to the applicant prior to the decision being made. However, to resolve these concerns, it also seems clear that the Council would have required a Preliminary Ecological Appraisal (PEA). Assuming the

applicant agreed to this, it would have resulted in the same or similar evidence to that submitted with the appeal. There is nothing to suggest that the expense associated with this would have been different whether provided at the application stage or appeal. In this context, even if I were to consider the Council's behaviour to have been unreasonable in this regard, I am not persuaded it necessarily led to wasted or unnecessary expense. The PEA would have been necessary in any event. As such, this would not meet the requirements for an award of costs in the PPG.

6. Conversely, once the appeal had been lodged, it is for the applicant to decide what evidence they wish to submit to support their case. The applicant was not obliged at this stage to commission additional evidence, particularly if they were of the view that the Council's objections were without substance. Although the new evidence concluded there would be no unacceptable harm, it was obviously considered necessary to support the case made. I am not persuaded that the expense was either wasted or unnecessary in this context.
7. The question is therefore whether it was unreasonable for the Council to consider the effect on biodiversity as a concern in the first place. The applicant has questioned the expertise of the Council officer in coming to the conclusion they did. I find no fault in this respect. Development Management officers are required to consider a wide range of issues in relation to a planning application. They will be advised by internal and external consultees, but in all cases they will use their own experience and judgement to make decisions and recommendations. This is neither unusual nor unreasonable. The fact the Council did not seek advice from the Wildlife Trust until the additional evidence had been submitted is also not evidence of unreasonable behaviour. This would not have been necessary for the officer to reach a view on whether they had sufficient information before them to conclude the impacts would be acceptable.
8. In addition, I see no reason why it was unreasonable of the Council to consider there to be some potential for impact on protected biodiversity assets. The proposal would have seen the demolition of a barn in a rural area and potential changes to the remainder of a site in agricultural use. Given the nature of the site, the nature of the development, the standing advice of Natural England, and an understandable precautionary approach to the protection of biodiversity assets, it is not unreasonable for the Council to have had some concern about the effects of development or conclude that they had insufficient evidence about likely impacts or mitigation. It is unlikely that this would have been resolved through a normal site visit. Again, while the PEA indicated that there would be no unacceptable harm, I do not consider the Council's initial concerns to be vague, generalised or without substance in the context of the proposal.

Finally, it would be wrong in my view to conclude that the Council behaved unreasonably in not 'substantiating' a reason for refusal that it no longer wished to defend. Indeed, the Council has provided a clear explanation for their change of position based on advice from the Wildlife Trust. It has considered the new evidence and changed their position accordingly. They have therefore substantiated their position on this issue. This is preferable in my view to maintaining an objection irrespective of new evidence. I am satisfied that the Council has not behaved unreasonably in this regard.

9. Other concerns raised about pre-application advice or delays caused by an error in advertising the application do not alter my conclusion. These do not relate to costs incurred in relation to the appeal process. Nor do these have any bearing on whether other unrelated actions by the Council should be considered unreasonable. Moreover, the status of the applicant as a Charitable Trust does not have any bearing on my decision, which must be on the individual merits of any application.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and consequently the application for a partial award of costs is refused.

S J Lee

INSPECTOR