
Costs Decision

Site visit made on 10 May 2021

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 June 2021

Costs application in relation to Appeal Ref: APP/C1570/W/20/3265181 Newlands, Champions End, Hempstead, Essex CB10 2NZ

- 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 R Midgley for a full award of costs against Uttlesford District Council.
 - The appeal was against the refusal of planning permission for the erection of a three bedroom one storey new-build house with mezzanine level.
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Decision

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

Reasons

2. Planning Practice Guidance 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 expense in the appeal process.
3. The application is for a full award of costs. The applicant claims that the Council has acted unreasonably in regard to offering conflicting advice pre and during the application process and generally been non engaging.
4. The applicant was given pre-application advice prior to the submission of application UTT/20/0813/FUL, which the applicant feels was more positive than the Council's stance on the subsequent application. Nevertheless, that advice did highlight that some of the issues pertaining to a previous application UTT/18/3513/FUL and subsequent appeal¹ had still not been adequately addressed. In any case, the pre-application advice given by an officer would have been non-binding on the Council in its determination of any subsequent planning application.
5. The applicant was informed by the officer that application UTT/20/0813/FUL was to be recommended for approval. Following an internal review, the Development Management Team Leader deemed the application to be unacceptable and the applicant was advised of this prior to any decision being made. I understand the applicant's frustrations with the conflicting views expressed by officers, particularly at a late stage in the application process. However, the assessment of a planning application is one that often involves a degree of subjective judgement and the Team Leader was entitled to reach

¹ Appeal Ref: APP/C1570/W/19/3226701

- their own view on the proposal having regard to national and local planning policies and the Council's own scheme of delegation.
6. That application was eventually withdrawn by the applicant. In withdrawing the application, the applicant lost the opportunity of appealing against any refusal. Therefore, the need for the submission of a further application, the subject of this appeal, and any necessary expense associated with it, arose from the applicant's decision to withdraw the previous application, rather than due to any unreasonable behaviour on the part of the Council. Furthermore, prior to the submission of that application, the Council gave the applicant a clear indication that the principle of the development would not be supported.
 7. Whilst regrettable, I do not find that any unnecessary or wasted expense has resulted from the lack of contact from the Council or its apparent unwillingness to visit the site. The Council has substantiated its reasons for refusal of the application. It was entitled to reach a view on the merits of the proposal having regard to the previous appeal decision.
 8. I have reached the same decision as the Council regarding the merits of the proposal. That does not vindicate any procedure or reasoning on their part. However, it establishes that it is not the case that planning permission should clearly have been granted; the Council's decision stands scrutiny relative to the statutory approach to decision-taking. Moreover, it also indicates that the applicant did not incur unnecessary expenditure; the dispute was a matter of planning judgement based on an extensive planning history, rather than their hands being forced into an appeal by consequence of unreasonable behaviour.
 9. It therefore follows that I cannot agree that the Council has acted unreasonably in this case. As such there can be no question that the applicant was put to unnecessary or wasted expense.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated. An award of costs is therefore not justified.

Mark Ollerenshaw

INSPECTOR