

Costs Decision

Site visit made on 22 March 2021

by R C Shrimplin MA(Cantab) DipArch RIBA FRTPI FCI Arb MCIL

an Inspector appointed by the Secretary of State

Decision date: 14 June 2021

Costs Application in relation to Appeals References:

APP/J1535/W/20/3250512 & APP/J1535/Y/20/3250513

Land at 'RHS House', Cutlers Forge, Tawney Lane, Stapleford Tawney, Romford RM4 1EE

- 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 A Marway for a full award of costs against Epping Forest District Council.
 - The appeal was made against the refusal of planning permission for "new vehicular access, driveway and subdivision of plot including associated boundary treatments following grant of CLEUD EPF/0260/18".
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Formal Decision

1. I refuse the application for an award of costs against Epping Forest District Council.

Submissions on behalf of Mr A Marway

2. The appellant points out the aims of the costs regime and makes various points in support of the application for an award of costs. Attention is drawn to the fact that a Lawful Development Certificate had previously been granted in respect of a separate dwellinghouse at 'RHS House'. Further, it is pointed out that the Council's advice during the course of the application process was flawed.
3. In relation to the appeal itself, it is argued that the Council's decisions on the applications ought to have recognised that the application scheme was acceptable. It is further argued that the Council's decisions ought to have followed the decision in a different case, relating to a "grasscrete (or similar mesh) drive" that was referred to in the submissions. Thus, it is asserted that the Council was inconsistent in its approach.
4. The appellant, therefore, "requests a full award of costs in relation to the appeal process".

Submissions by Epping Forest District Council

5. The Council point out that the separate nature of 'RHS House' had been settled previously to the application and appeal and was not in dispute in the appeal.

6. They argue that they had, in fact, defended their refusal of planning permission as set out in their decision notices, based on "the impact of development on the rural setting of the site", and that the planning issue had been clearly set out by them and supported in the appeal. In relation to the decision referred to by the appellant as being a "similar case", the Council argues that there were clear differences in the circumstances and that other cases would lead to different conclusions.
7. In short, the Council assert that the appellant has not, in practice, "been put to any additional expense in this appeal".

Reasons

8. The 'Planning Practice Guidance' 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.
9. I note that the Council's advice to the applicant during the application process was confused and confusing in some respects but I am aware that the application for costs relates to unnecessary or wasted expense in the appeal proceeding, as distinct from the application process. Thus, the way in which the Council dealt with the planning application does not affect my conclusions on the application for the costs of the subsequent appeal.
10. There were two appeals in this case (for planning permission and listed building consent respectively) and similar considerations applied in both. Essentially, the main issue for determination was the impact of the proposals on the setting of the listed building and the wider countryside. In this context, it was necessary to consider the implications of the proposed new crossover and associated works and I have concluded that the scheme is acceptable. The Council's arguments have not been persuasive and I have allowed the appeals, in consequence.
11. Nevertheless, I accept that a reasonable submission has been presented, to justify the Council's decisions and to express their views concerning the impact of the scheme. I have had regard to the guidance contained in the 'Planning Practice Guidance' (including the guidance given in respect of the local planning authority's handling of the planning application) and in my opinion, the weaknesses in the Council's case have not been of such a nature as to amount to unreasonable behaviour, bearing in mind the principle that the parties to a planning appeal normally meet their own expenses.
12. I find, therefore, that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the 'Planning Practice Guidance', has not been demonstrated. Hence, I have refused the application for costs against Epping Forest District Council.

RC Shrimplin

INSPECTOR