



Costs Decision

Site visit made on 25 May 2021

by Philip Mileham BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 June 2021

Costs application in relation to Appeal Ref: APP/W3520/W/20/3264393 Land at rear of Cedar Cottage, The Street, Occold, IP23 7PS

- 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 Hartbuild Ltd for a full award of costs against Mid Suffolk District Council.
 - The appeal was against the refusal of planning permission for the erection of 1no. two storey dwelling with attached garage.
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Decision

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

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 appellant has sought the award of full costs in relation to the Council's behaviour in determining its application as described above. The original application was recommended for approval by Council Officers albeit the Planning Committee, as the original decision-maker took an alternative view of the proposals. The Council's reason for refusal clearly related to planning considerations in respect of the impact of the was entitled to come to a different view on the merits of the application. I find there is no evidence to suggest that that the Council has unreasonably delayed development that should have otherwise been permitted.
4. The appellant considers the Council failed to identify why Cedar Cottage was identified as a non-designated heritage asset or substantiate this during the appeal. The National Planning Policy Framework ('the Framework') is clear that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application and a balanced judgement applied to the scale of any harm. The Council identified the potential for Cedar Cottage to be a non-designated heritage asset in its officers' report as well as undertaking a balancing exercise in relation to any effects. Whilst the Council's assessment of its significance could have been more thorough, I consider that overall, the issues were identified in reaching their decision. As such, I consider that the Council had acted reasonably in this regard notwithstanding the difference of opinion on the matter with the appellant.

5. Whilst the Council's supporting documentation for defending the appeal was limited to the minutes of the relevant planning committee meeting, the reasons for refusal were sufficient to identify the Council's concerns in respect of the scheme in relation to the main issues, as well as the identification of Cedar Cottage as a non-designated heritage asset. Therefore, I do not consider there to have been any unreasonable behaviour in this respect.
6. In respect of the second listed reason for refusal which related to the securing of affordable housing contributions, the Council identified through its' response to the application for costs that this reason for refusal was included in error and that it did not wish to defend this as part of the appeal. The Council stated that this error would have been addressed earlier in the process if the appellant had contacted the Council earlier in the process or sought a statement of common ground to be submitted as part of the appeal. However, there is no express requirement for such a statement to be provided, and in any event, this error should have been identified significantly earlier in the process as it was not mentioned in the planning committees' justification for the original refusal of planning permission. Furthermore, the minutes of the Planning Committee clearly indicate that the appellant's agent had raised this matter and this had not featured in the reasons for refusal in the committee minutes. As a result of the Council's error, the appellant has been required to address this matter in their appeal documentation which could otherwise have been avoided.
7. In light of the above, on this specific point, I consider that the Council's error amounted to unreasonable behaviour resulting in the appellant being put to unnecessary expense in respect of addressing this issue during the appeal process. As such, whilst I have not found unreasonable behaviour on the previous points sufficient to justify the award of full costs, I consider that the error is such that a partial award of costs in respect of this specific issue should be awarded.

Conclusion

8. For the above reasons I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has been demonstrated and that a partial award of costs relating to the issue of the affordable housing contribution is justified.

Costs Order

9. 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 Mid Suffolk District Council shall pay to Hartbuild Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the affordable housing contribution; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Mid Suffolk District 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.

P Mileham

INSPECTOR