



Costs Decision

Hearing Held on 1 & 2 December 2020

Site visit made on 10 March 2021

by D J Board BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th August 2021

Costs application in relation to Appeal Ref: APP/W3520/W/20/3248961 Land north of Glebe Close, Church Lane, Baylham, Ipswich IP6 8JS

- 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 Martin Doherty for a full award of costs against Mid Suffolk District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for change of use of the land to Gypsy and Traveller residential with the siting of one mobile home and one touring caravan together with the construction of hardstanding and associated landscaping.
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Decision

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

The submissions for Mr Martin Doherty

2. The submission was made in writing and expanded upon orally. The applicant submits a full costs application on the basis of unreasonable behaviour on the part of the Council. The application is pursued on the basis of the substantive conduct of the Council. In particular that the Council refused permission for development that based on national policy in the National Planning Policy Framework (the Framework) and development plan should have been allowed. In addition that the previous appeal decision¹ indicated that in principle the scheme is acceptable and that the Council failed to review the case following the appeal and acknowledge the weighting to policies and application of the tilted balance that the applicant considers to be correct in this case. Finally the applicant raises the Councils conduct regarding the Stour and Orwell Estuaries SPAs. In particular that it should not have been added as a reason for refusal.

The response by Mid Suffolk District Council

3. The response was made in writing and expanded on orally. In short the Council considers that the report for the scheme considers the applicable policies and that the weight to be applied was considered in accordance with the Framework. The Officers report also considered the previous Inspectors decision and the implications of it and the Council consider that just because it does not agree with the conclusions of the applicant this does not in itself amount to unreasonable behaviour.

¹ APP/W3520/W/16/3146040

Reasons

4. 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.
5. The same guidance² provides that the costs of a planning appeal may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

Application of policies to the appeal scheme and the tilted balance

6. Both the application report and the Council's statement of case refer to the development plan policies it considers are relevant to the case. The statement of common ground is clear that the weighting to these policies remained a matter in dispute in the run up to the hearing. Nonetheless, at the hearing the parties agreed on the basket of policies that were applicable in this case. In addition there was agreement that the collective basket was out of date and that paragraph 11 d ii would therefore be engaged.
7. I understand that the report on the appeal scheme and the statement of case do not address what was expressed orally by the Council at the event. However, the Council's position remained that the harm to character and appearance and conflict with the development plan in that regard and the car dependency of the scheme weigh against it such that planning permission should not be granted. Overall, this is a matter of judgement and I am satisfied that the Council explained and supported its position at appeal. Therefore, I do consider that there has been unreasonable behaviour on this point.

The previous appeal decision

8. The applicant considers that the Council's approach to decision making ran contrary to the previous appeal decision and does not fully take it into account. The previous appeal decision is a material consideration that the Council should take into account. The applicant submits that the previous appeal supports the scheme in principle. That decision does acknowledge the support offered by CS10. Nevertheless, it also goes on to consider the detail required of the PPTS, landscape policies and other material considerations associated with a site in the open countryside. The Officer report clearly refers to the previous decision and the weighting that was afforded to policies CL2 and SB3. The Council made it clear at the hearing that acceptance of the position of the basket of policies which engaged the tilted balance does not mean that the policies carry no weight in assessing the scheme. The Council has clearly justified its position and whilst I appreciate the applicant does not agree with this the Council's handling of it does not amount to unreasonable behaviour.

Reason for refusal 2 - the Stour and Orwell Estuaries SPAs

9. The applicant considers that it was not appropriate for this issue to be added as a reason for refusal. The planning officers report identifies that the site is within the Zone of Influence for the Stour and Orwell Estuaries SPA and

² Reference ID: 16-030-20140306

Ramsar site. When the application was submitted the Council made it clear that a unilateral obligation would be required to secure the payment required to provide the mitigation in accordance with the Suffolk Recreation Avoidance Mitigation Strategy (RAMS). The Council, as the competent authority, are required to ensure that there are no significant adverse effects from the proposed development either alone or in combination with other projects. In this regard in the absence of a completed obligation it was not unreasonable for the Council to add this as a reason for refusal. The Council has subsequently received payment of the contributions and withdrew its defence of this reason on both appeal cases. Nonetheless, this does not change the fact that at the point it determined the appeal the Council's action was proportionate and reasonable.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary expense as described in the PPG, has not been demonstrated. For the reasons given above I refuse the application for an award of costs.

D J Board

INSPECTOR