
Costs Decision

Site visit made on 10 August 2021

by Martin Small BA (Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9th September 2021

Costs application in relation to Appeal Ref: APP/P2114/W/20/3264333 Sunflower Lodge, Cleveland Road, Wroxall, PO38 3DZ

- 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 SJT Construction for a full or partial award of costs against Isle of Wight Council.
 - The appeal was against the refusal of planning permission for demolition of existing bungalow and 5 holiday units. Proposed development of 7 residential units.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, regardless of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in the consideration of whether or not costs should be awarded. PPG identifies only supplying relevant information at appeal when it was previously requested, but not provided, at application stage, as potential procedural unreasonable behaviour.
3. The application for costs follows the refusal of planning permission. Reasons for refusal 5, 6, 7 and 8 related to highway matters. The highway authority was consulted on the planning application and responded on 20 April 2020 raising objections to the proposed development. The applicant submitted an Access Statement and additional plans to address these concerns on 27 May 2020.
4. These were reviewed by the highway authority but did not fully address its concerns, as set out in its second response dated 1 June 2020, and objections were outstanding when the application was refused. The applicant contends that this response was not published on the Council's on-line register prior to the deadline for lodging the appeal. Statements have been provided to confirm that the response was not on the on-line register when the appeal was lodged on 2 December 2020. As the Council offices were closed to the public due to the Covid-19 pandemic at the time, the applicant was unable to check the paper file, and therefore contends that the appeal had to be submitted without sight of the highway authority's later response. This only became available to the applicant when the Council's appeal documents were received.

5. The Council contends that the response was published on 2 June 2020, as confirmed by the date automatically applied when documents are published as shown in the screenshot provided, although the Council has provided no firmer evidence to demonstrate that this was the case. On the balance of probability, based on the evidence before me, I accept the applicant's contention. I find that this failure amounts to unreasonable behaviour by the Council.
6. However, the applicant was fully aware prior to the lodging of the appeal that there were outstanding highways concerns from the Planning Officer's Report and the reasons for refusal on the decision notice. These were not introduced by the Council only at the appeal stage and so would not have come as a surprise to the applicant upon receipt of the Council's evidence for the appeal. The Council has justified these reasons for refusal through the application and appeal process and the applicant has had and taken the opportunity to respond to the highway authority's response of 1 June 2020 in final comments.
7. To merit an award of costs, it has to be demonstrated that unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process. The applicant chose to appeal in the knowledge that the highway authority's outstanding concerns would need to be addressed if these reasons for refusal were to be overcome. Had the applicant been able to address all these concerns prior to the determination of the application, the matters for appeal would have been narrowed but it is unlikely that the appeal itself would have been avoided as the Council had other fundamental concerns with the proposals. As it was, the highway authority still had concerns with the proposed development.
8. Moreover, there is no indication that had the applicant been able to seek to address the highway authority's outstanding concerns earlier, there would have been a cost saving. The applicant would still have needed to respond to these concerns if there had been the opportunity to do so prior to the determination of the planning application or through an appeal or through a revised planning application. Thus even if the Council did behave unreasonably, I do not see that the highway authority's response of 1 June 2020 not being available to the applicant prior to the lodging of the appeal has led to any unnecessary or wasted expense in this appeal.
9. An ecology report and a completed final unilateral undertaking were not provided prior to the determination of the planning application and the Council did not behave unreasonably in refusing the application in these respects. These were required to address the related reasons for refusal and even if they had been submitted earlier, it appears unlikely that the application would have been permitted and the appeal avoided. The Council promptly acknowledged that these reasons for refusal were addressed with the appeal. The applicant's complaint to the Council is principally a matter between the two parties.

Conclusion

10. I therefore conclude, for the reasons given above, that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated in this appeal. The application for a full or partial award of costs is therefore refused.

Martin Small INSPECTOR