
Costs Decisions

Site visit made on 17 August 2021

by S J Lee BA(Hons) MA MRPTI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2021

Application A: Costs application in relation to Appeal Ref:

APP/C1570/W/21/3267197

Koumala, Thornton Road, Little Canfield CM6 1SX

- 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 Paul Mitchell & Co for a full award of costs against Uttlesford District Council.
 - The appeal was against the refusal of planning permission for demolition of existing house and annex, remove trees and shrubs. To erect 4no. dwellings with parking, access road, bin & bike stores, landscaping and boundary treatments.
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Application B: Costs application in relation to Appeal Ref:

APP/C1570/W/21/3265789

Koumala, Thornton Road, Little Canfield CM6 1SX

- 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 Paul Mitchell & Co for a full award of costs against Uttlesford District Council.
 - The appeal was against the refusal of planning permission for demolition of the existing house and annex and erection of 4no. dwellings with parking, access road, bin and bike stores, landscaping and boundary treatments.
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Decision

1. Application A: The application for an award of costs is refused.
2. Application B: The application for an award of costs is refused.

Reasons

3. The above appeals were considered together. Costs applications were submitted for both appeals, ostensibly addressing very similar points. For the avoidance of doubt, I have considered the applications together.
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 appellant has put forward a number of concerns. In summary, these are that the Council failed to produce evidence to substantiate each reason for refusal, made vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis, imposed a condition

that is not necessary and has not determined similar cases in a consistent manner.

6. As the original applications were refused, the Council did not impose any conditions. Furthermore, I am satisfied that the imposition of conditions would not have provided sufficient mitigation to allow the development to proceed. Therefore, while it is not entirely clear from the applicant's statements where the concern lies in this regard, I am satisfied the Council did not act unreasonably in terms of the imposition of conditions.
7. The applicant's criticism of the Council's substantiation of their case appears to stem entirely from the information in the decision notice. The criticism is that this did not contain sufficient information or clarity. In my view, the decision notice clearly sets out the main areas of concern and the harm caused. I do consider it necessary to go into the detail expected by the applicant in the reasons for refusal. The reasons given provide an accurate summary of the Council's concerns.
8. In response to the appeal, the Council also submitted their delegated officer report. It is normal for Councils to submit additional information to explain and support the reasons for refusal. It cannot be considered unreasonable behaviour to provide the delegated officer report to fully substantiate the reasons for refusal. The applicant also had the opportunity to address any points raised in their 'final comments'. Therefore, there has been no prejudice to any interests in the submission of this report.
9. The report provides sufficient information and clarity for me to understand the first reason for refusal and the harm the Council considered would be caused by the developments. Disagreement about the interpretation of policies and development impact are matters of planning judgement. The Council is entitled to come to a different view to the applicant and thus this is not evidence of unreasonable behaviour. In addition, although reference to Policy H4 was justified in this case, even if this were not the case, it would have made little difference to the Council's overall argument. Conflict with other policies would still have existed. As such, there is no substantive evidence of unreasonable behaviour in this regard.
10. I am therefore satisfied that the first reason for refusal was clearly substantiated and the decision was not based on vague or generalised assertions about the impact of the developments.
11. In terms of the second reason for refusal, the officer report simply states that the development would be in conflict with Policy H10. The report does not provide any detail as to the harm that would be caused by the conflict with the policy or the weight that should be given to the conflict. The Council also sought not to address the applicant's evidence which suggested that this policy had not been referred to in similar developments. Nevertheless, the policy is quite clear that development of the type proposed should provide a proportion of 2 or 3 bed dwellings. The developments would be at odds with this and thus I do not consider it necessarily unreasonable that this policy was referred to in this case.
12. However, the Council's evidence in this regard does not go beyond a simple statement of fact and thus the evidence is somewhat vague. It would clearly have been helpful if the context for this policy, the extent of harm caused or

any response to the applicant's evidence had been provided. In addition, no evidence was provided by the Council to explain why Policy H10 had not been applied in the example cases provided by the applicant. Without any evidence from the Council to the contrary, I cannot conclude that all applications have been considered on a consistent basis.

13. However, these factors are unlikely to have changed the outcome of the applications. As with other applications on the site, the Council's concerns about character, appearance and living conditions would have been sufficient to refuse permission. The appeals would still have been necessary and associated costs would still have been incurred.
14. Notwithstanding any inconsistency in approach, it is also a matter of fact that the development would conflict with Policy H10. On this basis, it may still have been necessary to address this issue in the appeal. The rebuttal of the Council's evidence in the applicant's statement is also relatively short and based primarily on the outcome of a Freedom of Information request. I am not convinced this amounts to a significant amount of additional work and thus I do not accept there has been wasted or unnecessary expense. On this basis, even I was to conclude the Council's behaviour was unreasonable, an award of costs would not be justified.
15. The applicant also asserts that the Council has been inconsistent in its approach by allowing other similar forms of development in the district, including backland development. The relevant policies allow for such development to be permitted in certain circumstances and each case must be judged on its own merits. There is no strong evidence to suggest that the Council has been generally inconsistent in its approach to windfall development. Moreover, the planning history of the site indicates a clearly consistent approach to development on this site. The Council has not acted unreasonably in this regard.

Conclusion

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

S J Lee

INSPECTOR