



Costs Decision

Site visit made on 15 February 2022

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2022

Costs application A in relation to Appeal Ref: APP/X3540/W/21/3278799 3 Ivy Cottages, The Street, Darsham IP17 3QA

- 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 R Neobard (TTO (Suffolk) Limited) against East Suffolk Council.
 - The appeal was against the refusal of planning permission for 'proposed new build dwelling'.
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Costs application B in relation to Appeal Ref: APP/X3540/W/21/3278816 3 Ivy Cottages, The Street, Darsham, Suffolk, IP17 3QA, 641608, 270066

- 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 Rob Neobard (Neobards Limited) against East Suffolk Council.
 - The appeal was against the refusal of planning permission for 'proposed new build dwelling'.
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Decision

1. Both applications for an award of costs are refused.

Preliminary Matter

2. As set out above, there are two applications for costs relating to different planning appeals. These appeals were considered together as 'linked cases'. I have also considered these two costs applications together and I have outlined where the grounds of each application differs below.

Reasons

3. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
4. In relation to costs Application A, the applicant alleges that the Council acted unreasonably in refusing the planning application on the grounds of the effect on the character and appearance of the surrounding area. This is because, they allege that these matters had already been considered in relation to a previous appeal¹. However, that appeal related to a proposed dwelling sited in a different location, further away from the row of terraced properties. In

¹ PINS Ref: APP/X3540/W/20/3253049

contrast, the Appeal A proposal would be located slightly closer to the row of terraced dwellings. As such, the Council was considering a materially different scheme to the previous proposal allowed on appeal. In addition, the applicant has referred to the Council's absence of similar concerns (in terms of character and appearance) in considering an application under reference DC/20/1689/OUT. However, that scheme was also materially different, given that it related to an end-terrace dwelling as opposed to a detached dwelling.

5. The fact that I have found that the scheme would not be significantly harmful to the character and appearance of the area does not mean that the Council acted unreasonably for reaching a different conclusion. Indeed, for the reasons outlined above, the Council did not act unreasonably in this regard given the material differences between the schemes that had previously been granted planning permission and the Appeal A proposals.
6. In relation to Application B, the applicant refers to a previous application approved by the Council under reference DC/20/1731/FUL. The applicant suggests that the Council, in considering this previous application, found the location of the proposed access, adjacent to the neighbouring dwelling 'Two Hoots', to be acceptable. However, the applicant suggests that the Council approved the wrong plan, with the access shown in a different location (located further away from this neighbouring property than is proposed under the Appeal B scheme). Based on the approved plan, the development approved under application reference DC/20/1731/FUL is materially different to the Appeal B proposals in terms of the location of the access. As such, the Council did not act unreasonably in coming to a different view on the Appeal B proposal. Whether or not, in the process of considering that application, the Council suggested that a different access arrangement would be acceptable is not a significant factor, given that ultimately a different plan was approved.
7. In relation to Application B, the applicant also indicates that the effect of the proposed access on living conditions was previously considered and found to be acceptable by a Planning Inspector in considering two previous linked appeals². However, the appeal decision does not, to my mind, reach the conclusion that the access would not harm the living conditions of neighbouring occupiers. Indeed, this was not a main issue in the consideration of those appeals. Furthermore, the access location in relation to both of those previous appeal proposals was located further away from 'Two Hoots' than that proposed under Appeal B. For these reasons, the Council did not act unreasonably in refusing the Appeal B proposal on the grounds of an alleged impact on living conditions.
8. In relation to both Application A and Application B, the applicant alleges that the Council acted unreasonably in refusing the applications on the grounds of the impact on highway safety. This is because the applicant suggests that the Council should have taken into consideration a previous permission granted under application reference DC/20/1731/FUL, which utilised the same access onto the highway. However, the evidence before me indicates that the Council's main concern related to the intensification of the use of this access in the event that both appeals were granted planning permission. Since the Appeal A and Appeal B planning applications were refused an appeal has been allowed for a dwelling attached to No 3 Ivy Cottages³. As such, this dwelling could be implemented along with that approved to the rear of the site under

² PINS Refs: APP/X3540/W/20/3253049 and APP/X3540/W/20/3253509

³ PINS Reference: APP/X3540/W/21/3269034

application reference DC/20/1731/FUL. As a result, there is now a fallback position for two additional dwellings (as opposed to one), which could be implemented together, utilising the same access as would be utilised under the current appeal proposals. However, this fallback position did not exist at the time planning permission was refused.

9. Nonetheless, whilst the Council could have potentially granted permission for one of the two schemes, they would not have been acting unreasonably in refusing the other on the grounds of highway safety (given the intensification of the use of the access). Furthermore, given that the applications were refused for other reasons, it was not necessary for the Council to reach a conclusion on the acceptability of one scheme in favour of the other (in terms of highway safety). Therefore, the cumulative approach to the consideration of the applications was not unreasonable and the basis for this approach is made clear in the reasons for refusal. Furthermore, noting that the same highway safety evidence has been provided in relation to both appeals, the applicant has not been caused any unnecessary expense in putting that evidence forwards in respect of both appeals as opposed to just a single appeal.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated in respect of Application A, nor Application B. Therefore, the applications for an award of costs are refused.

Luke Simpson

INSPECTOR