
Costs Decision

Site visit made on 23 February 2022

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2022

Costs application in relation to Appeal Ref: APP/J1535/W/21/3270758 69 Church Hill, Loughton IG10 1QP

- 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 Reformer Ltd. for a full award of costs against Epping Forest District Council.
 - The appeal was against the refusal of an application for planning permission for Demolition of the existing dwelling and replacement with a block of 8 residential apartments alongside associated access, landscaping, amenity space, parking and other ancillary works.
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Decision

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

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. Paragraph 049 of the PPG states that examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The main thrust of the applicant's case is that the Council acted unreasonably by not having proper regard to the issues raised in a previous dismissed appeal and has failed to show due diligence in ascertaining the correct facts and circumstances of the case.
5. However, the Council's decision was supported by a comprehensive officer report that considered the findings of the Inspector under the previous dismissed appeal, including the changes made from the earlier scheme. Further, the Council's decision notice clearly set out the conflict between the proposed development and the requirements of the development plan and the National Planning Policy Framework.
6. I acknowledge that the Council refer to the position of the dwelling not having changed and the applicant's contention that the position was not raised as a concern by the previous Inspector. However, the position of the proposed building was considered in combination with its overall bulk in relation to its

surroundings. I am satisfied that the dismissed appeal has been treated by the Council as a material consideration in its assessment. An award of costs on this issue is not, therefore, justified.

7. Further, although the application plans included sections of some elements of the site, information relating to the proposed gradient of the whole of the driveway, which would also be the pedestrian route from the front of the site to the rear parking and amenity areas, was not provided by the applicant as requested by the Council prior to the application being made. I am satisfied that the Council properly considered the information that was provided. It was not unreasonable to reach the conclusion that the proposal had failed to demonstrate that adequate safe and suitable access for all users would be provided throughout the site. An award of costs on this issue is not justified.
8. The Council raised, in its response to the applicant's cost claim, that it considered the application had to be refused for it to meet the statutory time limits for determination. Although there is an option to agree an extension of time for determination which the Council did not seek, I do not consider this amounts to unreasonable behaviour in this case. This is because the matter of accessible movement within the site was not the Council's only concern about the proposal. Not seeking further clarification on this matter did not result in the prevention of development which should clearly have been permitted. Accordingly, an award of costs on this issue is not justified.
9. In relation to the Council's third reason for refusal, the applicant sought agreement from the Council, during the appeal process, to the wording of a Unilateral Undertaking (UU), that was to be provided as part of the appeal to address matters relating to habitats mitigation. It appears that the Council did not respond to several requests made between June and September 2021. A response was then provided during September, following communication with the Planning Inspectorate. The applicant was able to provide the agreed UU for consideration during the appeal. Unexplained delay and failures to respond to a reasonable request to provide information could be considered unreasonable behaviour. As the applicant raised this matter at final comments stage of this costs procedure, the Council has not had the opportunity to comment on it.
10. However, even if it had, and I had found unreasonable behaviour in this regard, the UU was received in time to be considered as part of the appeal and would have been required to address matters of mitigation in any case. I therefore consider that any frustration and extra work generated, in pursuing the Council for a response, can be regarded as minimal in the context of the wider appeal, and does not amount to wasted or unnecessary expense as described in the PPG.
11. The applicant considered that the Council's own evidence provides details on how development of the type proposed could be accommodated without impacting air pollution measures within the Epping Forest Special Area of Conservation. Although in my decision I did not find it necessary to undertake an appropriate assessment to ensure the proposal's compliance with the Habitats Regulations¹, and therefore did not reach a conclusion on the arguments put forward in this regard, I consider that it was still necessary for the applicant to provide evidence in respect of this matter, such that an appropriate assessment could have been carried out if all other matters under

¹ Conservation of Habitats and Species Regulations 2017

appeal had been found acceptable. Consequently, I do not consider that time and effort was expended on a part of the case that should not have had to be pursued. An award of costs on this issue is not justified.

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

S Tudhope

Inspector