



Costs Decision

Site visit made on 22 March 2022

by C Beeby BA (Hons) MIPROW

an Inspector appointed by the Secretary of State

Decision date: 18 August 2022

Costs application in relation to Appeal Ref: APP/C1570/W/21/3281255 Wyndhams Croft, Whiteditch Lane, Newport, Saffron Walden, Essex CB11 3UD

- 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 Younis Hammali for a full award of costs against Uttlesford District Council.
 - The appeal was against the refusal of planning permission for the demolition of the existing outbuildings and erection of 2 no. dwellings and alterations to existing access and new car parking and turning area for the existing dwelling.
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Decision

1. The application for an award of costs is allowed in part, in the terms set out below.

Reasons

2. The Planning Practice Guidance (the 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. The PPG indicates that local planning authorities will be at risk of an award being made against them in the following circumstances:
 - If they provide information that is shown to be manifestly inaccurate or untrue;
 - If they fail to produce evidence to substantiate each reason for refusal on appeal; and
 - If they make vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The applicant states that no objection was made by the highway authority on highway safety grounds. He considers that the highway safety reason for refusal was based solely on arguments by one councillor, and was not supported by substantive evidence.
5. The applicant states that it was acknowledged at committee that several members had not visited the site and did not know it well. He states that a committee member queried aspects of the proposal. He provides evidence that outbuildings at a different property were shown at the committee meeting, and states that no photographs of the appeal site were produced at the meeting.

He considers that members did not appreciate that the proposal entailed the re-use of an area where outbuildings are situated, a factor which he considers to result in a proposal which is in-keeping with existing character. He contends that members were consequently unable to fully understand the character of the area as a result of these factors.

6. The applicant states that a councillor who appeared at the meeting provided information on the Newport Quendon and Rickling Neighbourhood Plan (the NP), a previous planning application at the area and that this councillor was asked for guidance on the application of NP policies in the reasons for refusal. He considers that this was inappropriate.
7. The Council restates its highway safety assessment of the proposal. It considers that the cumulative impact of development in the area would result in significant harm to highway safety.
8. The Council contends that the lack of a site visit and the asking of questions by committee members are not unreasonable behaviour. It acknowledges that outbuildings at a different property were indicated at the committee meeting in error, but that the mapping referred to had only been consulted in order to ascertain whether there was existing development at the site. It states that the presentation to committee did not provide any photographs, and that members were satisfied that the plans, supporting documents and presentation provided sufficient information on which to reach a decision.
9. The Council confirms that policy advice was sought from a councillor and from planning department staff at the meeting.
10. The application was recommended by officers for approval and subsequently refused by committee, and the report to committee does not find harm to highway safety. It records that the proposal was acceptable to the highway authority. The committee minutes do not record any specific highway safety concerns, although they do show a resolution to refuse the application in part on the basis of Policy GEN1 of the local plan and highway safety provisions within the National Planning Policy Framework. The decision notice then finds conflict with these policies.
11. The Council's statement of case gives only a brief description of the Council's highway safety concerns, and these are not supported by reference to any substantive evidence. Furthermore, I have found in my appeal decision that the proposal would not harm highway safety. It follows that I do not share the Council's concerns.
12. The Council's evidence, as a whole, provides minimal analysis of the existing highway safety situation and fails to then assess and conclude on any effects on this issue which would be attributable to the appeal proposal. The Council's highway safety concerns consequently lack supporting evidence and are so vague as to render it difficult for the applicant to be able to respond to them at appeal. Thus, I consider that the Council has failed to produce evidence to substantiate its highway safety reason for refusal on appeal, and that it has made vague assertions about the proposal's impact in this regard, which are unsupported by any objective analysis. This unreasonable behaviour has led directly to the unnecessary expense to the applicant of preparing an appeal submission on the matter.

13. Turning to the remainder of the costs application grounds, a previous application at the site which was determined relatively recently was referred to at the committee meeting and there have been several other recent planning proposals along Whiteditch Lane. It is therefore reasonable to expect that the committee is likely to have been familiar with the site and its current surroundings. Furthermore, nothing before me suggests that it is necessary for members to visit the site of every planning application considered in order to reach their decisions, or that questions of clarification on physical features of a site form evidence of the use of inaccurate information by the Council.
14. Whilst an incorrect property was evidently identified in online aerial mapping at the committee meeting, members' attention was drawn to the error as soon as possible, as recorded in minutes from the following day. The evidence before me suggests that the matter did not form part of the application and that members, once aware of it, remained content with their decision in respect of the appeal property.
15. The committee report refers to the siting of the proposed dwellings at the site of existing outbuildings and their design at paragraph 3.2, and the committee minutes record reference to the existing outbuildings. These are marked on the submitted plans and referred to in the description of development.
16. I am consequently satisfied that members understood the location and circumstances of the appeal property correctly and appreciated that the proposal entailed the re-use of an area where outbuildings are situated, and therefore that no inaccuracy arose in these regards.
17. Whilst the minutes record that a councillor appeared at the meeting as a public speaker against the application and the Council confirms that policy advice was sought from a councillor, the evidence before me does not suggest any reason why these events may have contravened guidance or rules on such matters. Thus, the evidence before me does not support the applicant's contentions in this regard.
18. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated by the Council in its handling of the highway safety reason for refusal and that a partial award of costs is justified.

Costs Order

19. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Uttlesford District Council shall pay to Mr Younis Hammali, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the highway safety reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
20. The applicant is now invited to submit to Uttlesford District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

C Beeby - INSPECTOR