
Costs Decision

Site visit made on 20 September 2022

by L Douglas BSc (Hons) MSc MRTPI

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

Decision date: 13 October 2022

Costs application in relation to Appeal Ref: APP/W0530/W/21/3289405 Land to the rear of 53 Church Street, Gamlingay SG19 3JJ

- 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 N Drummond for a full award of costs against South Cambridgeshire District Council.
 - The appeal was against the refusal of planning permission for proposed development described on the application form as: 'Demolition of barn and erection of replacement barn to be used as a dwelling and parking'.
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Decision

1. The application for a full award of costs is not allowed, but a partial award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance 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 applicant claims that the Council acted unreasonably in the way it handled the planning application, causing a significant and unnecessary delay in obtaining planning permission and thus causing them unnecessary and wasted expense in pursuing the appeal.
4. Specifically, in respect of the first reason for refusal, it is claimed the Council failed to determine similar cases in a similar manner, failed to consider existing openings in the appeal building, and failed to take an amended plan¹ into account. In respect of the second reason for refusal it is claimed the Council falsely asserted that the proposed private amenity space would not meet the standard set out within the Council's District Design Guide Supplementary Planning Document² (the District Design Guide). In respect of the third reason for refusal it is claimed that the Council failed to sufficiently justify its objections, adopted an inconsistent approach, and failed to follow the advice of the National Planning Policy Framework. In respect of the fourth reason for refusal it is claimed the Council did not indicate the need for a Protected Species Survey.
5. The Council has claimed that it took a reasonable approach when determining the planning application, despite what it has described as unfortunate delays. It

¹ 'Plans and Elevations, Drawing Number: 1, Revision: SK06' dated 7 July 2021

² District Design Guide: High Quality and Sustainable Development in South Cambridgeshire (2010)

has described differences between the appeal proposal and what the appellant has referred to as similar cases, and it has claimed the amended plan was not accepted. In respect of the second reason for refusal it is claimed the proposed private amenity space would be contrary to the District Design Guide. In respect of the third reason for refusal it is claimed that previous planning decisions did not justify a car port of smaller size than that set out in the development plan. In respect of the fourth reason for refusal, it is claimed that further information was not requested in the interests of making a timely decision.

The Planning Application

6. There were significant delays in the Council's handling of the planning application, and it has not been adequately explained by the Council why it took over 7 months for the application to be determined. The evidence shows a number of emails from the applicant were not responded to by the Council, including one which enclosed the amended plan which sought to address part of the Council's concerns with the proposal. The content of the applicant's emails was not referred to in the Council's officer report. The applicant was free to lodge an appeal against the non-determination of the application, but they chose to encourage the Council to determine the application.
7. The Council's behaviour in failing to engage with the applicant, respond to emails and determine the application in a timely manner was unreasonable. It did not work positively or proactively with the applicant while considering the planning application and took a considerable amount of time to determine the application. This unreasonable behaviour did not, however, result in the applicant incurring unnecessary or wasted expense in the appeal process because they were free to lodge an appeal earlier, against the non-determination of the application, and because I have found the Council's decision to refuse the application was justified.

The First Reason for Refusal

8. The applicant has referred to other cases nearby where the Council has granted planning permission for development with a number of roof lights and ground to eaves level glazing. I have found that those developments do not inform the character or appearance of the Gamlingay Conservation Area (CA) to an extent which would make the overall design of the front elevation of the proposal, including its fenestration layout, acceptable. The mere fact that roof lights and ground to eaves level glazing exist elsewhere within the CA does not demonstrate that the Council has not determined similar cases in a similar manner.
9. I have found the proposed carport would not mirror existing voids or openings on the front elevation of the appeal building. Instead, I found it would contribute towards a cluttered front elevation which would relate poorly to its surroundings.
10. The Council did not refer to other examples of glazing permitted in the locality, or existing voids in the appeal building. However, I have found its assessment of the impact of the proposed development on the significance of the CA was well-founded. It has not been demonstrated that the Council failed to determine similar cases in a similar manner.

11. The Council failed to acknowledge and consider an amended plan which sought to address its concerns regarding the finish to the gable ends of the proposal. The changes to the proposal were minor in nature and would not have required the Council to have consulted interested parties further. It has not been adequately explained why the Council did not refer to the amended plan until the applicant's costs application, when it was claimed the plan was not accepted.
12. The Council's failure to acknowledge the amended plan, which was submitted some months before its decision to refuse the planning application, was unreasonable. I have found the amended plan would address part of the Council's first reason for refusal, and as such, that unreasonable behaviour resulted in the applicant incurring unnecessary expense in referring to this issue in their appeal and costs submissions.
13. Therefore, except for the failure to consider the amended plan, the Council's first reason for refusal did not constitute unreasonable behaviour resulting in the applicant incurring unnecessary or wasted expense in the appeal process.

The Second Reason for Refusal

14. The proposed private amenity space would meet the ideal minimum size guidelines set out in the District Design Guide. However, I have found the quality of the private amenity space proposed would be extremely poor. Overall, I have found the private amenity space proposed would not accord with the advice set out in the District Design Guide or the development plan, even in the context of historic plots with small and irregularly shaped gardens.
15. The Council's second reason for refusal was well-founded and did not constitute unreasonable behaviour resulting in the applicant incurring unnecessary or wasted expense in the appeal process.

The Third Reason for Refusal

16. I have found the Council's third reason for refusal was in accordance with the development plan, which specifies the minimum size for carports. I found there were other considerations which indicated a decision should be made other than in accordance with the development plan in respect of the third reason for refusal. This was based on information presented by the applicant during the appeal concerning average car lengths, which was not challenged by the Council. Those other considerations did not include the Council's previous decisions referred to by the applicant and the Lawful Development Certificate relating to the use of the existing building.
17. The Council's third reason for refusal did not allege any harm to highway safety. It identified conflict with the development plan, which seeks to ensure car parking is integrated into development in a convenient and accessible manner. As such, it was not unreasonable for the Council to identify this as a reason for refusal, and this did not result in the applicant incurring unnecessary or wasted expense in the appeal process.

The Fourth Reason for Refusal

18. At the planning application stage, the applicant failed to demonstrate the proposal would maintain, enhance, restore or add to biodiversity, which is a requirement of the development plan. The Council was not obliged to explain

this to the applicant prior to the decision notice being issued, although it would have been helpful. The protected species survey submitted as part of the appeal allowed me to find that the proposal would be capable of maintaining biodiversity in accordance with the development plan.

19. The Council's fourth reason for refusal did not therefore constitute unreasonable behaviour resulting in the applicant incurring unnecessary or wasted expense in the appeal process.

Conclusion

20. The Council acted unreasonably in failing to acknowledge the amended plan submitted to it by the applicant on 12 July 2021, over 3 months prior to the Council's decision being issued. The amended plan addressed a minor concern previously raised by the Council. As a result of this unreasonable behaviour, the applicant had to incur unnecessary expense in explaining the submission of this plan, responding to the Council's concerns relating to the finishes of the side elevations of the proposal, and in submitting a costs application in this regard. That expense would have been minor, but it was unnecessary. A partial award of costs in favour of the applicant in these respects is therefore justified.
21. The Council acted unreasonably in taking over 7 months to determine the planning application and failing to respond to the applicant's many emails concerning the planning application. That unreasonable behaviour did not result in the applicant incurring any unnecessary or wasted expense in the appeal process. With the exception of the above, the Council's decision to refuse planning permission for the four stated reasons did not constitute unreasonable behaviour. An award of costs in respect of these matters is not therefore justified.

Costs Order

22. 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 South Cambridgeshire District Council shall pay to Mr N Drummond the partial costs of the appeal proceedings described in the heading of this decision, limited to those incurred by explaining the submission of the amended plan titled 'Plans and Elevations, Drawing Number: 1, Revision: SK06', responding to the Council's references to masonry finishes on the side elevations of the proposal, and by submitting a costs application in respect of the Council's failure to take the amended plan into account.
23. The applicant is now invited to submit to the 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

L Douglas

INSPECTOR