



Costs Decision

Site visit made on 6 September 2022

by C Shearing BA (Hons) MA 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/C1570/W/21/3282617 Sabre House, Dunmow Road, Stebbing, Essex CM6 3LF

- 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 K Newnham for a full award of costs against Uttlesford District Council.
 - The appeal was against the refusal of planning permission for development described as 'demolish all buildings and remove commercial uses (car sales and airport parking etc) and construction residential development of up to 9 dwellings'.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Examples of unreasonable behaviour that may lead to award of costs against the local planning authority are given in the PPG, and the appellant has drawn on a number of these examples within their application. I have addressed these within the headings below.

Changes in circumstances since the 2017 planning permission

4. The appeal scheme sought to effectively renew the 2017 permission (ref UTT/17/2480/OP), granted 28 November 2017. The Council's Committee report refers repeatedly to the 2017 permission and it is also reflected in the minutes of the Committee meeting. It is therefore clear that the decision makers were aware of the circumstances of that permission and the weight to be given to that planning permission was a matter for those decision makers.
5. Based on the evidence, the main change to occur between the date of the 2017 permission and the 2021 refusal, was the publication of the revised National Planning Policy Framework (the Framework) where the 2017 permission would have been approved under the March 2012 version of the Framework. While this constituted a change in the material considerations surrounding the appeal, it is not clear from the evidence before me which aspects of the revised Framework, if any, led the Council to reach a different conclusion on the appeal scheme.

6. Progress was also made on the Stebbing Neighbourhood Plan in the time between the 2017 permission and the refusal. However, it is similarly not evident that this played a pivotal role in the Council's decision, and the document was in draft form at that time.
7. It is clear from the evidence that the development plan and the circumstances of the site itself remained unchanged at the time of the Council's refusal in 2021. The 2017 Committee report assessed the development in light of the absence of a five year land supply for housing, and Policy S7 of the Uttlesford Local Plan 2005, which were the same for the appeal scheme. The Council have not provided any further evidence to suggest that there were other material considerations which led them to make a different decision on the appeal scheme, and have not adequately substantiated where a change in circumstances did exist.
8. The PPG is clear that types of unreasonable behaviour may include '*failing to grant a further planning permission for a scheme where there has been no material change in circumstances*', and '*not determining similar cases in a consistent matter*'. Based on the evidence, both these occurred in the determination of the appeal scheme and amounted to unreasonable behaviour.

Procedural Matters

9. In addition to those matters above, there was a delay in the determination of the planning application associated in part with the need for the application to be determined by the Planning Committee. While this delay resulted in the 2017 permission lapsing before the decision, the delay alone was unlikely to result in a different conclusion to the application. While the Planning Committee did not agree with the advice of their officers who had recommended approval, this similarly does not amount to unreasonable behaviour as it is part of the Council's decision making process.
10. The Committee minutes do not specifically reference those key issues relating to the site that the applicant considers were fundamental to its acceptability. However, those matters were nonetheless discussed within the Committee report that was before the members of the Committee and they would have been aware of these matters in reaching their decision.
11. The reason for refusal provided by the Council clearly and concisely describes the reason why permission was refused. While the applicant disputes the Council's assessment, and while I have disagreed with the Council's conclusion, I nonetheless find the reason for refusal was adequate and based on development plan policy as well as referencing the Framework. Notwithstanding the concerns above, the consideration of those issues was a matter of judgement for the decision makers, as was the weight which should be afforded to the policies of the development plan. Unreasonable behaviour did therefore not occur in respect of these procedural matters.

Conclusion

12. For the reasons given, the Council have failed to substantiate the circumstances which resulted in a different decision to that taken in 2017 and have consequently exercised unreasonable behaviour in line with the examples given within the PPG.

13. While the appellant has not specifically referred to the unnecessary expense which has occurred, it naturally follows that if the unreasonable behaviour above had not occurred then the appeal process would inevitably have been avoided. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described by the PPG, has been demonstrated and that an award of costs is justified.

Costs Order

14. 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 K Newnham, the costs of the appeal proceedings described in the heading of this decision.
15. 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for the detailed assessment by the Senior Courts Costs Office is enclosed.

C Shearing

INSPECTOR