



Costs Decision

Site visit made on 17 November 2022

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2023

Costs application in relation to Appeal Ref: APP/A1530/W/22/3290724 Bypass Nurseries, Dobbies Lane, Marks Tey CO6 1EP

- 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 Jason McAdam, on behalf of Nustone Products Ltd, for a full award of costs against Colchester Borough Council.
 - The appeal was against the refusal of planning permission for change of use of land from garden nursery (sui generis) to B8 storage.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that costs may be awarded against a party who has behaved unreasonably where the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Local planning authorities are required to behave reasonably in relation to procedural matters at the appeal and with respect to the substance of the matter under appeal. Examples of unreasonable behaviour may include preventing or delaying development which should clearly be permitted or failure to produce evidence to substantiate each reason for refusal on appeal.
4. The applicant considers that the Council failed to engage with them adequately during the course of the planning application, including failing to convey concerns pertaining to the reasons for refusal and to provide the landscape officer's comments. This denied them an opportunity to provide additional information or to revise the application before the decision notice was issued. The applicant also notes that this is contrary to the 'Positivity Statement' the Council attached to the decision notice.
5. Only the unnecessary or wasted costs of the appeal itself can be recovered by an award of costs. The reason for refusal is set out clearly in the Council's decision notice. Further justification is provided in the Council's Officer Report and appeal statement, with reference to relevant national and local planning policy, as well as the representations received. It will be seen from my decision that I agree with the Council's judgement in this instance and consider that there were sufficient grounds for refusing planning permission. I therefore do not consider that the Council has acted unreasonably in refusing planning permission.

6. I acknowledge the applicant's frustrations regarding the level of communication during the Council's consideration of the application. However, the Council maintains that the issues were so fundamental that it was not possible to negotiate a satisfactory way forward. The evidence before me does not otherwise clearly indicate that the appeal could have been avoided altogether had the main parties held further discussions.
7. Furthermore, although the PPG and National Planning Policy Framework encourage local planning authorities to take a positive approach and work proactively with applicants, I have little substantive evidence which indicates that pre-application discussions could not have been undertaken on the merits of the scheme had they been requested, or that the Council was under an obligation to work with the applicant during the determination period.

Conclusion

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

Ryan Cowley

INSPECTOR