

Costs Decision

Site visit made on 30 September 2022

by R C Shrimplin MA(Cantab) DipArch RIBA FRTPI FCI Arb MCIL

an Inspector appointed by the Secretary of State

Decision date: 17 January 2023.

Costs Application in relation to Appeal Ref: APP/Z1510/W/22/3297020 Land at 6 Wheel Chase, Sturmer, Essex CB9 7GW

- 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 and Mrs Raynes for a full award of costs against Braintree District Council.
 - The appeal was made against the refusal of planning permission for *"Change of Use of a small parcel of land to the side of no.6 Wheelchase to residential; A length of 1.8m high timber close boarded fence; To erect timber post of rail to other boundaried [1.4m high]"*.
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Formal Decision

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

Submissions on behalf of Mr and Mrs Raynes (the Appellants)

2. The appellants argue that the local planning authority has behaved unreasonably. They point out that the application as presented had been the result of "taking on board what the planning officers guidance had been in previous PreApp replies" and they argue that there could be no reasonable grounds for refusing planning permission for the development that was the subject of the planning application as submitted. The appellants go on to argue that the Council have refused to grant planning permission on the basis their concerns about what the appellant may do on the land in the future and that this approach is unreasonable.

Submissions by Braintree District Council

3. The Council defended their refusal of planning permission. They make it plain that their decision was, indeed, based on their assessment that the applicants had an intention to change the use of a more extensive area of land, as indicated in their earlier proposals. They assert that the Council's assessment of the use of the larger parcel of land was justified and was not unreasonable.

Reasons

4. 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.

5. Nevertheless, I am aware that the application for costs relates to unnecessary or wasted expense in the appeal proceeding, as distinct from the application process. This decision does not address the claim for "repayment of the PreApp fee", therefore, although it has been raised by the appellants.
6. The Council have evidently not based their decision on the development that was proposed in the planning application but on their perception that a different proposal (which had been discussed previously) would be implemented in the event. In reality, of course, any future breach of the planning legislation would need to be addressed as such, if and when it might arise, presumably through the enforcement procedures. Hence, the Council's approach to the decision-making process on this planning application was wholly unsound and unreasonable. The reasons for refusal that were given in the Council's Decision Notice were clearly not applicable to the development that was the subject of the planning appeal and the appeal has been allowed.
7. In short, I consider that the behaviour of the local planning authority amounted to unreasonable behaviour as envisaged in the 'Planning Practice Guidance', even bearing in mind the principle that the parties to a planning appeal normally meet their own expenses.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the 'Planning Practice Guidance', has been demonstrated and that a full award of costs is justified.
9. 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 Braintree District Council shall pay to Mr and Mrs Raynes, the costs of the appeal proceedings; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
10. The applicant is now invited to submit to Braintree 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 a detailed assessment by the Senior Courts Costs Office is enclosed.

Roger C Shrimplin

INSPECTOR