



Costs Decision

Site visit made on 7 March 2023

by Philip Major BA(Hons) DipTP MRTPI

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

Decision date: 16 March 2023

Costs application in relation to Appeal Ref: APP/X3540/W/22/3300310 Land off St Andrew's Place and Waterhead Lane, Melton, Woodbridge, Suffolk IP12 1QX

- 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 C Dawson (Warburg Dawson Partnership) for a full award of costs against East Suffolk Council.
 - The appeal was against the refusal of planning permission for residential development of up to 55 dwellings with access off St Andrew's Place.
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Decision

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

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The application was made in writing and cited 5 reasons why costs should be awarded. I deal with each in turn.

The Decision

4. The Planning Committee in effect had 2 bites of the cherry in deciding the application. I can well understand that the resolution to grant permission subject to the completion of a S106 agreement would have been encouraging to the applicant at that time. However, until the permission is issued it cannot be relied upon. There is nothing to prevent a Council taking a different view subsequently. The question to be answered is, essentially, was the Committee unreasonable in revisiting the putative decision and changing its mind? The proposal was legitimately returned to the Planning Committee in light of information received, and as a result the Committee decided to conduct a site visit. It was after that site visit that the Committee changed its view, which it was entitled to do. Given that in my consideration of the case itself I found it to be finely balanced I do not accept that when the Committee re-examined the position it was unreasonable to find a different balance. I agree that this appears on the face of it to be inconsistent, but in my judgement it does not stray into the realms of irrationality or unreasonableness.

Process of the Application

5. Clearly the decision took a long time to be reached. However, I take into account here that there were matters which required to be addressed during the consideration of the application. I am informed that this required re-consultation with appropriate bodies, and I have no reason to doubt that. Although the determination period was lengthy it has been explained as necessary in the circumstances. I am not persuaded that the Council acted unreasonably on this matter.

Construction Access

6. The Committee patently took a judgement after having visited the application site. The members saw for themselves the highway configuration. Taking a decision based on the submissions and their own observations and experience is a normal part of the decision-making process. That I have reached a different conclusion on access does not mean that the Members were unreasonable to decide otherwise. The Council's (and Highway Authority's) case has put forward matters which support its stance, albeit that I have made a different, balanced, judgement. The Council was not unreasonable in this regard.

Potential for Conditions/S106 Agreement

7. It is clear from the submissions that the Highway Authority continued to maintain an objection to this proposal, partly on the basis of there being inadequate provision for sustainable travel initiatives. These matters were addressed in the Committee reports and it is apparent that the Applicant was receptive to S106 obligations and the imposition of conditions to achieve sustainable travel features. Indeed the Highway Authority made recommendations for conditions dealing with that point, such as for the provision of travel packs to residents and provision of real time information for buses. I therefore find that the phrasing of part of the reason for refusal, namely that "the scheme should provide measures to improve sustainable travel opportunities for the occupiers of the development and reduce the need for motor vehicle use which are not evident" to be erroneous. Taking that view did not reflect the reality of the situation. In my judgement it was an unreasonable stance to take. That said I am not satisfied that it has caused any unnecessary expense since the matters in issue would have had to be dealt with in any case in relation to the S106 obligation now submitted and in dealing with conditions at an appeal which was 'inevitable' because of other reasonable concerns expressed by the Council. The conditions proposed were readily dealt with in short order in the Appellant's appeal submissions.

Direct Footway Link

8. This part of the reason for refusal resulted from the Highway Authority's submissions. The footway link is not a requirement of Policy MEL20, but there can be little doubt that it would be beneficial. In any event it seems to me that the Council took a view which was defensible – that in the absence of the link the development would not maximise opportunities to encourage sustainable travel. Taking that view was not unreasonable, albeit that I have found the measures proposed to be acceptable. Therefore no unreasonable behaviour has occurred in this regard.

Conclusion

9. Taking this matter overall I have found unreasonable behaviour in one minor respect relating to the failure to give due regard to the potential for conditions to deal with sustainable travel matters. But in my judgement this has not led to unnecessary or wasted expense since it would not have removed the necessity to submit an appeal based on other factors.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Philip Major

INSPECTOR