
Costs Decisions

Site visits made on 9 October 2022 and 23 March 2023

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 April 2023

Costs application 1 in relation to Appeal Ref: APP/V0510/W/22/3303436 The Crown Inn, 14 Church Street, Fordham CB7 5NJ

- 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 Cordage 28 Ltd for a partial award of costs against East Cambridgeshire District Council.
 - The appeal was against the refusal of planning permission for the erection of two four-bedroom dwellings (use class C3) adjacent to The Crown public house (use class Sui Generis) utilising existing access with associated parking and landscaping including reconfiguration of the pub's car park.
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Costs application 2 in relation to Appeal Ref: APP/V0510/W/22/3309056 The Crown Inn, 14 Church Street, Fordham CB7 5NJ

- 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 Cordage 28 Ltd for a full award of costs against East Cambridgeshire District Council.
 - The appeal was against the refusal of planning permission for the erection of two four-bedroom dwellings (use class C3) adjacent to Indian Garden 2 restaurant (use class E) utilising existing access with associated parking and landscaping including reconfiguration of the restaurant's car park.
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Costs application 3 in relation to Appeal Ref: APP/V0510/W/22/3309056 The Crown Inn, 14 Church Street, Fordham CB7 5NJ

- 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 East Cambridgeshire District Council for a full award of costs against Cordage 28 Ltd.
 - The appeal was against the refusal of planning permission for the erection of two four-bedroom dwellings (use class C3) adjacent to Indian Garden 2 restaurant (use class E) utilising existing access with associated parking and landscaping including reconfiguration of the restaurant's car park.
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Decisions

1. The applications for costs are refused.

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of an appeal, costs may only 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. These cases relate to the second and third in a series of three applications and three appeals which all raised similar issues of principle but differed in terms of detailed scheme design.

Costs application 1

4. In costs application 1, the appellant seeks a partial award of costs for the second appeal stating that the Council acted unreasonably in arguing that the Indian Garden restaurant is a valued community facility, and thus East Cambridgeshire Local Plan Policy COM3 applies, contrary to the decision in respect of an appeal in the same district at Bottisham¹. This led to an unwarranted reason for refusal and consequently unnecessary time and expense in dealing with it at appeal.
5. However, the Crown Inn is specifically listed as such a facility in paragraph 4.33 of the Fordham Neighbourhood Plan and the decision to grant permission for the change of use to a restaurant was on the basis that it would remain a valued community facility comparable to the Chequers and the White Pheasant, other restaurants in the village included in the paragraph 4.33 list². The Inspector's conclusion as to the status of the restaurant in Bottisham is not relevant in this case as it is a professional judgement in relation to the circumstances of the individual restaurant concerned. In addition, the premises were not definitively listed in a neighbourhood plan.
6. I therefore find that the Council behaved reasonably in pursuing the argument and that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

Costs application 2

7. In costs application 2, the appellant seeks a full award of costs for the third appeal. In addition to the argument put forward in costs application 1, the appellant argues that the Council unreasonably pursued a reason for refusal that there would be highway safety risks due to a shortage of parking spaces and delivery vehicle turning facilities, contrary to the views of the local highway authority, and introduced an unwarranted additional reason for refusal that there would be a poor level of amenity for future residents due the access through the restaurant car park.
8. However, whilst disputing them, the appellant does not claim that the reasons for refusal in relation to the setting of the listed building and impact on the conservation area were unreasonable, so a full award of costs would not be justified. Dealing with the other points made, the Council is not bound to follow the advice of the local highway authority, particularly in respect of its own car parking standards, and the restaurant delivery arrangements would not be ideal, being inhibited if the car park is full. It was therefore reasonable to make a highway safety argument. In the second and third applications the car parking for the houses was moved to the rear of the properties from the front, involving access through the full length of the car park. This could lead to some inconvenience and is also not an ideal arrangement, so the Council was not unreasonable to introduce an additional reason for refusal.

¹ Appeal APP/V0510/W/19/3227331

² Officer report for the change of use application 21/01047/FUL

9. I therefore find that the Council behaved reasonably in refusing the application for the various reasons given and that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

Costs application 3

10. In costs application 3, the Council seeks a full award of costs for the third appeal on the grounds that the appellant acted unreasonably by submitting a third very similar application and appeal. A biodiversity enhancement plan and further car parking survey were submitted by the time of the second appeal to seek to overcome two reasons for refusal. However, there were only minor design amendments between the second and third applications, and with the principle of the development in dispute, the inevitable third appeal involved unnecessary duplication of the Council's case and hence unnecessary and wasted expense.
11. Indeed, as a result of the submission of three similar applications and appeals, and without the withdrawal of any earlier appeal, time wasting duplication and extra expense has been incurred by all concerned. However, due to the Council's reluctance to engage, on a without prejudice basis, with the detailed design of a scheme on the site, the appellant was unable to refine a preferred scheme in order to submit a single appeal to deal with the primary dispute, namely the principle of development on the site. The Council's actions thus contributed to the duplicate applications and appeals such that an award of costs would not be justified in this case.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

Conclusion

13. For these reasons none of the applications for costs should succeed.

David Reed

INSPECTOR