



Costs Decision

Site visit made on 30 May 2023

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 June 2023

Costs application in relation to Appeal Ref: APP/Q0505/D/22/3310215 2A Ashwood, Downhams Lane, Cambridge, Cambridgeshire CB4 1XT

- 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 Phil Eade for a full award of costs against Cambridge City Council.
 - The appeal was against the refusal of planning permission for replace existing boundary 3 foot high fencing with 6 foot high hit & miss fencing. Increase vehicle access visibility splay.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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.
3. Paragraph 049 of the PPG states that examples of unreasonable behaviour by local planning authorities includes not determining similar cases in a consistent manner. The applicant submits that the Council has acted unreasonably as its decision on the appeal proposal was not consistent with a previous application.
4. A previous application¹ proposed installation of fencing on the front perimeter of the site, along with other features. The previous application was refused by the Council solely for reasons of harm to highway safety, including that "the proposed 6ft fencing to be located upon the front boundary of the application site will remove the pedestrian visibility splays for the existing access for the site".
5. The delegated report provided assessment of the effects of the previous scheme on the character and appearance of the area, concluding that the previous application scheme "as a whole would not cause a detrimental impact upon the character and appearance of the area" and would be "compliant" with Policies 55 and 56 of the Cambridge Local Plan 2018. The effects of the fence on the character and appearance of the area did not therefore form a reason for refusing the previous application.
6. The appellant submitted a new application relating to the proposed fence only which sought to overcome the highway safety issues cited in the Council's reasons for refusal. This new application forms the basis of the appeal case.

¹ LPA reference: 21/02826/HFUL

Since both schemes propose 'hit and miss' fencing of equal height at the front boundary, there is a high degree of similarity between the appeal scheme and the previous application. The appellant therefore had a reasonable expectation that, were the effects of the proposal on highway safety resolved, planning permission would be granted.

7. However, the Council refused the appeal scheme for matters of character and appearance, citing conflict with Policies 55 and 56. By refusing the appeal scheme for reasons of character and appearance despite the similarity between the proposals, the Council did not determine the applications in a consistent manner. On this basis, the Council behaved unreasonably.
8. The applicant incurred wasted expense through obtaining professional services to overcome the reasons for refusal relating to the previous application and submission of the new planning application. Costs relating to the period during determination of the planning application cannot normally be claimed. However, I am mindful of the advice at Paragraph 033 of the PPG which indicates that behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
9. Therefore, for the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

10. 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 Cambridge City Council shall pay to Mr Phil Eade, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Cambridge City 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.

E Dade

INSPECTOR