



Costs Decision

Site visit made on 1 June 2023

by S. Hartley BA (Hons) Dist.TP (Manc) DMS MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 23 June 2023

Costs application in relation to APP/V0510/W/22/3310748

Land to the rear of 75-91, The Causeway, Burwell CB25 0DU

- 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 A Nuttall of Lunda Developments (Red) Ltd against the decision of East Cambridgeshire District Council.
 - The appeal was against the refusal of planning permission for the residential development of 6 dwellings with associated landscape works.
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Decision

1. The application for an award of costs is allowed in part.

Reasons

2. 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.
3. The applicant submits that the Council has acted unreasonably in so far that it has failed to substantiate its reasons for refusal.
4. In respect of the living conditions reason for refusal, it is noteworthy that the planning officer considered that there would be no harm caused to existing residents. While the Council does not dispute that the proposal accords with separation distance standards in its Design Guide SPD 2012, this is guidance and does not have the same weight as development plan policy. In this case, members of the Planning Committee did undertake a site visit and hence were able to fully consider the scale and position of the dwellings, the topography of the site and surrounding land, and hence to reach a judgment in terms of whether such development would have an enclosing or dominating impact leading to a loss of outlook.
5. In respect of the first main issue, while I do not agree with the conclusion reached by the Planning Committee, I consider that it has been reasonably substantiated. The point of contention is essentially a matter of subjective planning judgement.
6. Notwithstanding the above, I do not consider that the Council has reasonably substantiated its position in respect of the second reason for refusal (i.e., matters of highway and pedestrian safety). It would have been clear to the Planning Committee that the scheme had evolved during the determination of the application and that it had been specifically amended to address initial concerns raised by the Highway Authority.

7. The Council's statement of case simply directs me to the Planning Committee minutes. Concerns about highway safety, and conflict between users of the public right of way and vehicles from a proposal for six dwellings, has not been reasonably justified in the form of objective evidence. While I accept that previous planning permissions for the site have now lapsed, the Council provide no reasonable evidence to indicate why it was content to allow six dwellings previously in highway safety terms, but not now.
8. While the Planning Committee were not obliged to follow the advice of its planning officers, or indeed the Highway Authority, it was nevertheless incumbent upon it to provide compelling and justified reasons for departing from such advice. This has not happened in terms of this appeal.
9. In addition, even if objective evidence had been provided to demonstrate that the proposal would lead to highway safety conflicts, the Council did not reasonably consider the option of imposing a condition requiring improvements to the access including the junction with The Causeway.

Conclusion

10. For the above reason, I conclude that the Council has acted unreasonably in part. Therefore, the applicant has been put to wasted time and expense in pursuing the appeal. Therefore, a partial award of costs is justified.

Costs Order

11. 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 East Cambridgeshire District Council shall pay to Mr A Nuttall of Lunda Developments (Red) Ltd the costs of the appeal proceedings, limited to those costs incurred in respect of preparing for and responding to matters relating to the Council's second reason for refusal; such costs to be assessed in the Senior Courts Costs Centre if not agreed. The proceedings concerned an appeal described in the heading of this decision.
12. Mr A Nuttall of Lunda Developments (Red) Ltd is now invited to submit to East Cambridgeshire 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.

S. Hartley

INSPECTOR