
Costs Decisions

Site visit made on 14 February 2023

by Paul Thompson DipTP MAUD MRTPI

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

Decision date: 4 July 2023

Costs application in relation to Appeal Ref: APP/D3505/W/21/3287373 Land east of Assington Barns, The Street, Assington CO10 5LW

- 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 Babergh District Council for a full award of costs against Mr T. Thain.
 - The appeal was against the refusal of an 'Outline planning application with all matters reserved except access for the construction of 18 dwellings comprising 10 x three bed bungalows, 1 x four bed bungalows and 7 x one bed almshouse type units for older persons'.
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Costs application in relation to Appeal Ref: APP/D3505/W/21/3287380 Land to the east of The Barn, Assington Barns, The Street, Assington CO10 5LW

- 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 Babergh District Council for a full award of costs against Mr T. Thain.
 - The appeal was against the refusal of an 'Outline planning application with all matters reserved except access for the construction of 4 x two bed almshouse type units for older persons'.
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Decision

1. The applications for awards of costs are refused.

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. The application for a full award of costs is made by Babergh District Council (BDC) in response to the application of costs against it by Mr T Thain (the appellant), on the basis that the appellant's grounds are factually incorrect, misconceived, or poorly made out, so are unreasonable and have resulted in BDC being put to unnecessary expense to respond to the application.
4. The appellant's substantive grounds were clearly articulated in the document submitted with his application for costs and I found in his favour on three of the grounds submitted in relation to affordable housing and flood risk for Appeal A and the effect on community facilities associated with Appeal B. Similarly, I also found in favour of the appellant in respect of procedural

grounds relating to the failure to disclose to Members of the Planning Committee that the Committee Report (CR) contained incorrect information.

5. In terms of affordable housing, the appellant was late in submitting a Unilateral Undertaking (UU) to deal with it and did not liaise with BDC or SCC on its content, despite an offer of assistance. As this matter could have been resolved far more amicably with cooperation, it would serve no practical purpose to address unreasonable behaviour when both parties exhibited it in respect of this point.
6. The appellant also believed that other grounds for refusing the planning applications were not clear, but BDC satisfactorily articulated these in its CR and Statement of Case (CSoC). Moreover, in my main decision, I found both appeal schemes would be harmful to the character and appearance of the area and would not constitute sustainable development. Similarly, on procedural grounds, BDC explained the processes that are available to notify interested parties of Planning Committee Meetings. I was therefore satisfied BDC did not exhibit unreasonable behaviour in any of these respects and, equally, I do not believe the appellant acted unreasonably by raising these points considering all of the grounds introduced. In any event, BDC quickly dealt with these matters in its response to the application for costs.
7. In my main decision and the appellant's application for costs, I had regard to the potential impact of flood risk referred to in the CR for Appeal B. It appears the appellant neither interrogated the evidence in the CR or CSoC, nor did he provide any evidence to dispute it. This therefore amounts to unreasonable behaviour by the appellant.
8. Suffolk County Council's (SCC) requirements for the proposed development were clearly articulated in its consultation response for the application relevant to Appeal A and reiterated as part of the appeal. These would not have been a surprise to the appellant, and they did not cease to be relevant in the absence of a reason for refusal. Moreover, I explained in the decision relating to the appellant's application for costs that SCC would have been a losing party. The application against SCC on the basis it introduced new requirements therefore constitutes unreasonable behaviour by the appellant.
9. In my decision relevant to the appellant's costs, it is evident I found his concerns to be legitimate in some respects, I cannot therefore find he exhibited unreasonable behaviour in making the overall application against BDC and SCC. Nevertheless, my findings above indicate he acted unreasonably in respect of other issues. Despite this, the statement regarding the appellant's application was generally straightforward and includes a short rebuttal of his case. It appears to me that, in reality, there has been so little extra work, as a result of the appellant's application for costs, that it can be regarded as 'de minimis'. In fact, BDC quickly and succinctly responded to his cases without wasting expenditure. As a result, although the appellant acted unreasonably, he did not cause unnecessary or wasted expense. Therefore, awards of costs are not justified.

Paul Thompson

INSPECTOR