
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 Mr T. Thain for a full award of costs against Babergh District Council and Suffolk County Council.
 - 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 Mr T. Thain for a full award of costs against Babergh District Council and Suffolk County Council.
 - 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 in both appeals is made against Babergh District Council (BDC) and Suffolk County Council (SCC), on the basis they each acted unreasonably on procedural and substantive grounds.
4. Firstly, in terms of BDC, the applicant considers that both planning applications were unreasonably refused and defended, and it has failed to produce evidence to substantiate its reasons for refusal on appeal or to appropriately assess the planning merits of the submitted schemes. In addition, the applicant also considers BDC's Committee Report (CR) was misleading to Members of its Planning Committee regarding the provision of affordable housing and implications of flooding; that it failed to provide adequate notice of the planning

applications being heard by the Committee; and that its officers did not correct misunderstanding and inaccurate reporting of the cases. Furthermore, the applicant also seeks costs in his defence of BDC's own application for costs.

5. Secondly, the applicant claims SCC has acted unreasonably on substantive and procedural grounds in respect of Appeal A for introducing a detailed statement and raising issues that neither formed part of BDC's reasons for refusal nor were identified by BDC as concerns in the CR, including obligations required in a legal agreement. Furthermore, the claim also relates to procedural and substantive grounds on the basis that, as Lead Local Flood Authority, SCC raised flooding as concerns of both applications when the circumstances did not necessitate consideration at that stage.

Babergh District Council

Substantive Grounds – Reasons for Refusal on Both Appeals

6. In my main decision for Appeal B, I explained that there is no reference in Policy ASSN17 of the Assington Neighbourhood Plan to the future development or expansion of community facilities, it only guards against the loss of such facilities. Assington Barns would clearly remain alongside the proposal, including through reconfiguration of existing parking. BDC therefore incorrectly applied this policy and made inaccurate assertions about the impact of the proposal. This constitutes unreasonable behaviour, and the application may not have been refused on such grounds had the Members of BDC's Planning Committee been correctly informed regarding this policy context.
7. The applicant considers BDC did not sufficiently explain why the proposals would be visually harmful, but I am satisfied BDC's concerns were clearly articulated in its CR and Statement of Case (CSoC). Moreover, in my main decision, I also found that each of the appeal schemes would be harmful to the character and appearance of its site and surroundings.
8. The policies and reason referred to in the fourth reason for refusal relevant to Appeal A should be read together with the CR and CSoC, which should each be read as a whole. In this context, I am satisfied BDC satisfactorily explained why it considered Appeal A would not amount to sustainable development. While I considered this approach in a different way to BDC, in my main decision I arrived at a similar conclusion. I also found the accessibility of the site to services and facilities in the village to constitute an absence of harm that would neither be for nor against the proposal.
9. In this sense, BDC did not prevent development which should clearly be permitted, as there is conflict with relevant policies.

Substantive and Procedural Grounds – Affordable Housing (Appeal A)

10. The applicant's scheme of affordable housing was not supported by BDC's Housing Enabling Officer (HEO), as a mix of housing was requested and need for only a single 1-bed unit was identified in the village. Neither of these points were clarified in the CR, as it stated no affordable housing was to be offered with Appeal A. The opposite was the case, as set out in the Planning Statement and Application Form. BDC subsequently provided a full breakdown of the affordable housing need summarised in the CR in its CSoC.

11. This was unreasonable, as the information presented in the CR was incorrect and BDC's position was not clear regarding the mix of homes required or whether a legal agreement was needed to secure it. The HEO's full consultation response may have been available for Members of the Planning Committee to consider separately. I also ultimately found in my main decision that the scheme of affordable housing would not be appropriate. Despite these factors, the applicant would have expected the CR to correctly explain these facts to Members, including what BDC expected to be delivered.
12. On reading the CR, the applicant subsequently sent a statement to BDC and asked for it be read out at the Meeting, but legal advice provided to Members indicated this could not be disseminated. While this sequence of events is reflected in BDC's evidence, it does not address the reality that errors had clearly been identified by the applicant in the CR and these were not corrected by Officers. Furthermore, BDC's reason for refusal ought to have been clearer regarding its very specific concerns. Had this all taken place then the applicant may have taken a different course of action in seeking to address this matter.
13. The omission of a request for a legal agreement to secure the affordable homes is not exceptional, as BDC had other reasons for refusal, but it would have focussed the applicant's attention when deciding whether to seek to remedy BDC's concerns. Equally, I am also mindful the applicant was late in submitting a Unilateral Undertaking (UU) to deal with affordable housing and did not liaise with BDC to complete it, even though it offered some 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.

Procedural Grounds – Notice of the Planning Committee Meeting

14. It is commonplace for the dates of Planning Committee Meetings to be advertised on Council websites and for any persons interested in an application to be able to receive updates regarding any changes to it, including whether an application is included on an agenda for a meeting and the availability of the CR. While contact between the main parties to confirm the applications were to be heard at the meeting would have been courteous, there is insufficient evidence before me from either party to demonstrate whether or not this took place. On this basis, I conclude that BDC took sufficiently reasonable steps to identify the presence of the applications at the Meeting.

Suffolk County Council

Planning Obligations

15. In its consultation response for the planning application relevant to Appeal A, SCC set out its requirements for the proposal and reiterated these with the appeal. Hence, it was right to protect its interests regarding the obligations.
16. The omission of a reason for refusal relating to a legal agreement to secure obligations required by SCC is not exceptional, but it would not have assisted the applicant in the preparation of his appeal. Nevertheless, I am mindful the obligations did not cease to be relevant and could have been needed to make the development acceptable, so they would not have been a surprise. Should I have allowed the appeal, I would also have been obligated to allow the parties

time to consider such matters, as failure to do so would have resulted in SCC being a losing party.

17. As with affordable housing, the absence of discussion between the applicant and other parties, even though it was offered, did not help to address this matter and it could have been resolved more amicably. However, I cannot conclude that SCC acted unreasonably in this regard.

Flood Risk

18. As part of the appeals, SCC supplemented information for Appeal A, which led to conditions being recommended and BDC not defending its reason for refusal. It did not offer any further evidence for Appeal B, but the applicant disputed the need for further evidence to demonstrate the absence of flood risk.
19. The reasons why a Flood Risk Assessment (FRA) should be submitted for Appeal A were not clear as the site is less than 1 hectare in size and the response was incomplete in respect of other missing requirements. It is also unclear whether BDC gave SCC any further opportunity to respond prior to the Planning Committee or raise with it the concerns expressed by the applicant prior to the Meeting. Nevertheless, the failure to adequately justify its initial objection amounts to unreasonable behaviour by SCC.
20. In terms of Appeal B, the applicant alleges that a FRA would not be required as none of the conditions outlined in Footnote 55 in the National Planning Policy Framework are met. However, in my main decision, there were clear reasons why a FRA would be required as evidence before me indicates that the appeal site may be subject to other sources of flooding and it would introduce a more vulnerable use (dwellinghouses). The applicant did not refer to or dispute this evidence, which was referenced in the CR. I cannot therefore conclude SCC acted unreasonably in recommending that a FRA be submitted for the proposal.

Defending the Council's own Application for Costs

21. The applicant also responded to BDC's application for costs as part of his comments on its rebuttal of his own application. In my response to BDC's claim, I indicated that I believed he had behaved unreasonably in respect of his approach to the defence of grounds relating planning obligations and flood risk for Appeals A and B respectively, which I expanded upon above. I therefore cannot find the BDC's decision to submit its own application for costs, in the face of legitimate concerns, to amount to unreasonable behaviour.

Unnecessary or Wasted Expense

22. The applicant submitted a short Statement of Case and provided final comments responding to evidence submitted by BDC and SCC, but these are generally straightforward and include a short rebuttal of the Councils' positions. It appears to me that, in reality, there has been so little extra work, as a result of the appeals, that it can be regarded as 'de minimis'. In fact, the applicant quickly and succinctly responded to their cases without wasting expenditure. Although I find that the Councils acted unreasonably, they did not cause unnecessary or wasted expense. Therefore, awards of costs are not justified.

Paul Thompson

INSPECTOR