The Planning Inspectorate

Costs Decision

Site visit made on 7 June 2023

by L Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2023

Costs application in relation to Appeal Ref: APP/V2635/W/22/3312436
Appletrees, Herrings Lane, Burnham Market, King's Lynn PE31 8DW

- 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 Mark Crane for a full award of costs against King's Lynn and West Norfolk Borough Council.
- The appeal was against the refusal of planning permission for: Proposed replacement dwelling and garage/store without complying with a condition attached to planning permission Ref 21/02160/F, dated 08 February 2022.

Decision

1. The application for an award of costs is 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 applicant contends they have incurred wasted expense in submitting an unnecessary appeal. This is because of the Council's unreasonable behaviour in not looking at the scope of s73 of the Town and Country Planning Act 1990 (TCPA) when considering the legal basis for making a decision, that there was no valid planning reason for the refusal, and that there was flawed logic and interpretation of the National Planning Policy Framework ('the Framework') (2021). The applicant also considers that the decision was not consistent with the Council's previous practice when determining s73 applications, and that the refusal was intended to raise increased CIL liabilities.

4. In my Appeal Decision I confirmed the Council's approach as correct with relation to the assessment of the impact of the proposed amendment to the condition. This was undertaken in accordance with s73, the development plan, and the Framework, with a valid planning reason provided. The Council therefore correctly interpreted s73 of the TCPA and did not display flawed logic.

5. Although I do not have the full information before me relating to the other s73 application examples determined by the Council, the officer reports provided indicate that each application for variation of conditions was assessed in a similar manner as for this appeal. That being, any impacts of the proposed amendment, and whether it would thus still be in accordance with the development plan. I also have not been provided with any examples where the Council has approved a phasing plan for a single dwelling. Overall, I find no inconsistency in this regard.

6. My Appeal Decision has addressed how the CIL is of relevance to this case, and I do not repeat this here. The CIL was not referenced within the reason for refusal, and the officer report specifically identified that any CIL implications were not to be taken into account. The Council has therefore not gone outside the scope of their legal authority regarding this point. This is further reinforced by my finding above that a valid planning reason was provided.

7. I conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process as described in the PPG, has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

L Hughes

INSPECTOR