



Costs Decision

Site visit made on 11 October 2023

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2023

Costs application in relation to Appeal Ref: APP/Y1110/W/23/3320777 Land adjacent to Gras Lawn and Fleming Way, Gras Lawn, Exeter, Devon EX2 4TP

- 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 Matthew Macan for a full award of costs against Exeter City Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for Construction of two 1B/2P houses.
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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. The applicant considers that the Council acted unreasonably by not determining the planning application at the original planning committee and failing to produce evidence to substantiate its position that the scheme should be refused.
3. I have noted the recommendation of Council Officers in the Planning Committee Report and the detailed minutes of the Council's planning committee meeting of March 2023. At the meeting, the vote to approve planning permission as per the Officers' recommendation was lost. However, rather than resolving to refuse permission and identify a reason at that point, Members deferred determination of the application for Officers to report reasons for refusal to the next committee meeting. Although this delayed a decision on the planning application and led to the applicant's submission of an appeal for non-determination, the Council clearly intended to refuse planning permission, albeit on a delayed basis. It seems to me that an appeal was inevitable and could thus not have been avoided in any event.
4. The minutes of the March committee meeting, showing that Members received a briefing on the proposal from Council Officers and that the applicant's agent spoke in favour of the scheme, set out, in detail, Members' various concerns with the proposal. Following the committee's deferral but prior to the appeal being made, the Planning Officer's correspondence with the applicant's agent explained the delay and identified that the reason for refusal would be based on matters relating to character and appearance. In addition, although the appeal was submitted before the next planning committee meeting and thus before the Council could issue a decision, the Officer's Report for that meeting was published whilst the applicant was preparing their appeal statement.

5. Containing an update following the previous committee meeting, that second report included a summary of Members' concerns with the planning application and a suggested reason for refusal. The reason is complete, precise, specific and relevant to the development proposed, details the alleged harm, in-line with Members' previously expressed concerns, and includes relevant local and national planning policies which the proposal is alleged to conflict with. When preparing and submitting the appeal against the Council's failure to issue a notice of their decision, the applicant was therefore clearly aware of not only Members' concerns and their intention to refuse permission, but also of the likely reason for refusal.
6. Members' deferral of their decision to get Officers to identify reasons for refusing the scheme did delay the process and mean that the Council did not issue a decision after the first committee meeting. However, Members' intention to refuse permission, on grounds relating to character and appearance, was clear. Accordingly, and given I have found that an appeal would have been inevitable in any event, the alternative option (to appeal against a refusal to grant planning permission) would have covered very similar issues to the submitted non-determination appeal.
7. It has been put to me that the report to the next meeting of the Planning Committee failed to include the full technical reasons for refusal or to reconcile the Officers' change in recommendation. However, the report before me does include a recommended reason for refusal based on Members' concerns with the scheme. It also does not indicate that Officers changed their previous recommendation; and although that recommendation was that the committee grant conditional approval of the planning application, Members are not required to accept Officers' professional advice so long as a case can be made for the contrary view.
8. The Council's failure to submit an appeal statement means that the justification for Members' position on the scheme rests on the minutes of the committee meetings and the content of the second Officer Report. However, although an appeal statement may have provided further detail, those minutes and second report, including the relatively detailed suggested reason for refusal, include enough detail to justify the Council's position. Although I have come to a different overall conclusion and allowed the appeal, the submitted evidence therefore sufficiently substantiates the Council's position and suggested refusal reason.
9. The delays related to submission of the Council's appeal questionnaire and its consultation of third parties on the appeal were unfortunate and could be considered unreasonable. However, this only resulted in a minor delay to the timetable and did not delay the conclusion of the appeal. There is also little evidence before me that this, or the Council's failure to submit an appeal statement, resulted in additional or wasted expense for the applicant.
10. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and an award of costs is not warranted.

T Gethin

INSPECTOR