



Costs Decision

Site visit made on 10 July 2023

by C Harding BA (Hons) PGCert PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th January 2024

APPLICATION A:

**Costs application in relation to Appeal Ref: APP/F2605/W/22/3299886
135 Dereham Road, Mattishall NR20 3NU**

- 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 William Smith for a full award of costs against Breckland Council.
 - The appeal was against the refusal of planning permission for garage/store/office.
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APPLICATION B:

**Costs application in relation to Appeal Ref: APP/F2605/W/22/3299887
West End House, 135 Dereham Road, Mattishall NR20 3NU**

- 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 William Smith for a full award of costs against Breckland Council.
 - The appeal was against the refusal of planning permission for erection of garage with store within the garden and new access.
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Decision

1. Applications A and B for an award of costs are refused.

Preliminary Matters

2. Although this decision relates to two appeals, these were related to two developments at the same site. The appeal subject of Application B related to a planning application submitted following the refusal of the planning application subject of Application A. In this sense, the appeals are related, and the alleged aspects of the Council's unreasonable behaviour relate to the overall process of both planning applications and their respective appeals. I have therefore considered the cost applications on this basis.
3. For clarity, I have referred to the appeal subject of Application A as 'Appeal A', and that subject of Application B as 'Appeal B'.

Reasons

4. 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. PPG sets out the circumstances in which a local planning authority's handling of a planning application prior to appeal may lead to an award of costs. Parties in planning appeals normally meet their own expenses, and costs may not be claimed for the period during the determination of the application. In order to be successful, an application for costs needs to clearly demonstrate

how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense in order to be successful.

5. Although the planning application subject of Appeal A was refused by the Council's Planning Committee, following a recommendation for approval by the Council's Officers, the means by which a planning application is determined is for the Council to decide in accordance with its own internal guidance. It has not been shown that the determination process that the application followed was incorrect or flawed.
6. Furthermore, although the Planning Committee received advice from Council Officers that the application should be approved, it was not bound to this recommendation, and was entitled to reach a different conclusion having regard to the merits of the case, and on the basis of the information before it. As Appeal A was dismissed, it was not the case that development which should clearly be permitted had been delayed, or the planning application that ultimately led to Appeal B unnecessary. In any event, costs can only be claimed in relation to the appeal process, and therefore any costs related to the preparation of the application which ultimately led to Appeal B would fall outside the scope of these decisions.
7. In both appeals I concluded that the proposals would be acceptable with regard to their effect on the character and appearance of the area. However, it does not follow that the Council acted unreasonably in reaching a different view. The effect of a development upon the character and appearance of the area is often a subjective matter. The provided statement in relation to Appeal A clearly set out the Council's case in relation to this issue, which was also reflected, in detail within the Council Officer's report in relation to the application which ultimately led to Appeal B. Although there is no specific reference to the additional information provided by the appellant in relation to the revised proposal and its effect on the character and appearance of the area, other than mention that previous concerns had not been addressed, there is no evidence to indicate that it was not taken into account by either Officers or the Council's Planning Committee. The Council was entitled to reach the decisions that it did based on the information before it.
8. There is little evidence before me in relation to the appellant's attempts to liaise with the Council between the two planning applications. Details of an email exchange have been provided which indicates that advice was provided to the appellant to provide photomontages, however the emails provided date from after the submission of the second application, so do not directly relate to any attempts to resolve issues prior to its submission. It has not been demonstrated that the Council failed to act positively in this regard.
9. There is variance between the reports of Council Officers and the appeal statements produced on behalf of the Council. The reports produced for the planning committee set out the professional views of Council Officers as recommendations prior to the Council reaching a formal decision. The evidence produced for the appeal reflected the views of the Council as a single body on the basis of its formal decision. That there should be variance between these documents is not unusual, nor unreasonable.
10. The Council indicated that it did not wish to defend its reason for refusal on Appeal B in relation to the effect of the development upon European Protected Sites. The appellant contends that the content of Natural England's letter ('NE

advice') of 16 March 2022 made it clear that the proposal fell outside of the scope of such concerns.

11. The Environment Act 2021 sets out a precautionary principle in relation to the decision-making process in the face of a lack scientific certainty. The NE advice highlighting the potential effect of nutrients upon the status of European Protected Sites was issued during the course of the second application. Therefore, this matter had not been considered during the previous application, nor, understandably, did the second application include evidence in relation to it.
12. The NE advice does not specifically exclude particular forms of development from the consideration of likely significant effects in relation to the Conservation of Habitats and Species Regulations 2017. Rather, it provides various frameworks for the consideration of such risks, and any appropriate assessment that may be required. The NE advice is clear in highlighting that the assessment of likely significant effects remains with the decision maker.
13. Therefore, with no evidence before it in relation to this matter, the Council was justified in applying the precautionary principle. Whilst it could have sought additional information from the appellant, it would also have been mindful of issuing a timely decision on the planning application. In any event the additional information would have been required to be produced at some point in the process, and it was not, therefore, an unnecessary expense, nor, given the Council's other concerns, did it lead to an unnecessary appeal.
14. Furthermore, the Council only indicated that it would not be defending this reason for refusal following the receipt of further evidence in relation to this matter from the appellant as part of Appeal B. This also is not evidence that its approach was unreasonable, as the reason for refusal related directly to the lack of such information.
15. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

C Harding

INSPECTOR