The Planning Inspectorate

Costs Decision

Site visit made on 10 January 2024

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2024

Costs application in relation to Appeal Ref: APP/J1535/W/23/3329931
Land and garages at Whitehills Road, Loughton, Essex IG10 1TS

- 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 Dal Sumal for a partial award of costs against Epping Forest District Council.
- The appeal was against the refusal of planning permission for development described as 'existing garages enlarged, extended and reduced from 27no garages to 21no garages'.

Decision

1. The application for a partial award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ('the PPG') advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal.

3. When the Council submitted its appeal statement, it maintained all three of its reasons for refusing the planning application. However, it subsequently provided an addendum to its statement in which it advised that it had reconsidered the third reason for refusal (which concerned the effect of the proposal on housing delivery) and would no longer pursue it. No further explanation for this change in its position has been provided, either as part of the addendum to the appeal statement or during the costs application process. In addition, the Council has provided no cogent explanation of why it initially defended the reason for refusal before later withdrawing it some time after the deadline given in the appeal timetable for the submission of its statement and after too the appeal statement had been copied to the appellant.

4. The PPG is clear that the withdrawal of any reason for refusal and not reviewing a case promptly following the lodging of an appeal as part of sensible on-going case management may give rise to an award of costs against a local planning authority. In the absence of details evidencing any change in circumstances or other relevant factors that were the grounds for the Council's change in stance and the late withdrawal of the reason for refusal, I find that it has behaved unreasonably.

5. The unreasonable behaviour has directly caused the appellant unnecessary and wasted expense in the appeal process in the preparation, submission and review of evidence in respect of the third reason for refusal.

6. For these reasons, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and a partial award of costs is warranted.

Costs Order

7. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Epping Forest District Council shall pay to Mr Dal Sumal the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in connection with the Council's third reason for refusal.

8. The applicant is now invited to submit to the Epping Forest District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

J Bowyer

INSPECTOR