



Costs Decision

by K Winnard LL.B (Hons) Solicitor

an Inspector appointed by the Secretary of State

Decision date: 14.02.2024

**Costs application in relation to Appeal Ref: APP/Y5420/D/23/3330703
The Old Workshop, Sloley Road, Sloley, Norfolk NR12 8HA.**

- 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 and Mrs Harper-Gray for an award of costs against North Norfolk District Council.
 - The appeal was against the refusal of the erection of a garage with external alterations.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, 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 PPG gives examples of behaviour which may give rise to an award of costs against a local planning authority. Unreasonable behaviour can relate to procedural or substantive matters.
3. In seeking an award of costs the agent for the appellants refers to both procedural and substantive matters in relation to the determination of the planning application. The appellants' agent refers to the Council having behaved unreasonably as to when the application was placed for determination on the agenda for the planning committee, the consequential need to update the committee verbally and the subsequent determination of the application by the Planning Committee. Particular reference is made in relation to comments made by one member and to the fact a consultee response was not provided or placed on the portal prior to the committee meeting. In relation to substantive matters the agent for the appellants refers to the Council making generalised assertions as to the proposal's impact and being unwilling to negotiate.
4. Turning to procedural matters, the appellants' agent considers that the Council acted unreasonably in not advising that it was always the intention to place the item for determination at the Planning Committee on the 20 July 2023. If this were the intention of the Council this is not entirely consistent with the reason given within the request for an extension of time sent on the 27 June 2023. However, I note that the statutory due determination date had been formally set as 19 June 2023. From the information before me it does not appear that the extension of time request was formally agreed and returned. Hence I do not consider it unreasonable for the Council to have placed the application for

determination on the agenda for what appears to be, the first available Planning Committee after the 19 June. It would however in the circumstances have been appropriate in my view for the Council to have informed the agent at the time this was done, and to have also given the actual date of the committee meeting within the email of 13 July 2023. However, and notwithstanding this poor communication, the agent for the appellant was able to present their case, including the revised proposals at the Planning Committee meeting of the 20 July. Hence, I do not consider that the appellants were unduly prejudiced as a result of this nor did they incur unnecessary expense.

5. Revised plans in relation to the application were received by the Council on the 13 July, and as a consequence the changes were reported verbally to the Planning Committee at its meeting of the 20 July. The appellants are concerned that this meant members of the committee had little time to absorb the new information or reach a considered view. However, this is not unusual, and members of the Planning Committee are well used to receiving and assessing updated information at their meeting. I note that in this instance the members received a full presentation from both officers and the agent as to the proposal now put before it including reference to the public benefits test. Further even if the consultation response had been placed on the portal or provided, the revisions did not affect the main concern of the consultee as to the principle of the proposal. I do not consider therefore that, whilst not ideal, publication of the consultee response would have resulted in a different outcome. Taking account of all of the above, I consider that the members had sufficient detail before them to be able to reach a sound decision based on their judgment.
6. The appellant is also concerned that information within the officer report relating to a historical breach of planning control not within the application site was not corrected and influenced a member of the Planning Committee unduly. A note of the discussion on the merits of the application has been provided by the appellant. This note has not been materially challenged by the Council. The reference to the replacement of owl slots within the officer report is contained within the reporting of third party representations and the officer report is clear that other planning breaches were across the wider group and in separate ownership. Moreover, when the comment was made, I note that the Chair gave the agent the immediate opportunity to clarify that the replacement owl slots did not relate to the application site. I note too that the reason for refusal does not include any reference to owl slots. Though I note the concerns of the appellants and appreciate that the vote which was taken was split, those members voting against the proposal were voting in accordance with the officer recommendation. Further, there is no suggestion that any other member of the committee shared this view. In such circumstances I cannot conclude that the Planning Committee gave undue significance to this information in its decision making process, nor that they would have reached a different decision but for this information.
7. On substantive matters, the appellant indicates that the reasons for refusal are generalised and unsubstantiated. However, these are matters of planning judgment based on an assessment of fact and degree of the effect of the main issues relating to the development. The Council were entitled to form their own views about the impacts of the development and their reasons were clearly set out in the Decision Notice. Even though, for the reasons set out in my appeal

decision, I have reached a different conclusion, I cannot agree that the Council has acted unreasonably.

8. Finally, whilst I appreciate the appellants' willingness to engage and negotiate further, the information I have seen indicates that the Council was clear in sharing its heritage concerns about the development with the appellants from an early stage. Notwithstanding this, the reason for the request for the extension of time suggests there were some discussions as to the merits of the proposal and I note revised plans were subsequently received. Whether to negotiate changes is a discretionary one and I do not consider it unreasonable for a Council to determine an application as put before it. Given the fundamental nature of its objection to the principle of development within this location, it appears to me that it was unlikely that more could be achieved through further negotiation, discussion or amendment. Thus the appeal process was unavoidable in this regard.
9. Accordingly I do not consider that the Council acted unreasonably in relation to the issues raised and therefore the appeal could not have been avoided. I do not find that the appellants incurred unnecessary or wasted expense as described in the PPG and accordingly the application for an award of costs is refused.

K Winnard

INSPECTOR