



Costs Decision

Site visit made on 12 March 2024

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th March 2024

Costs application in relation to Appeal Ref: APP/V2635/W/23/3324424 Old Rectory Hall Lane, South Wootton, Norfolk PE30 3LG

- 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 Azam Gabbair for a partial award of costs against King's Lynn and West Norfolk Borough Council.
- The appeal was against the refusal of planning permission for a dwelling.

Decision

1. The application for an 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 (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 PPG makes it clear that a local planning authority may be at risk of a substantive award of costs if it fails to substantiate its reasons for refusal at appeal, and/or makes vague generalised or inaccurate assertions about a proposals impact which are unsupported by any objective analysis.
4. The applicant's cost claim states that the Council acted unreasonably in reaching the decision to refuse the application for planning permission due to the failure to consider imposing a condition to make the development acceptable in planning terms, the failure to present the revised landscaping plan and the Council's continued defence of their reasons for refusal, giving that a condition could mitigate concerns with biodiversity.
5. The applicant asserts that the Council lacked willingness to consider a landscaping plan prior to the case being heard at Planning Committee. Given the Council acted in accordance with their published procedures, they did not act unreasonably in this regard.
6. The Council, or more specifically its Planning Committee, refused the planning application against officer advice. Whilst a planning committee is entitled to make decisions that are contrary to the officer recommendation, there is an expectation that where this occurs it should show reasonable planning grounds for taking a contrary decision and produce sound, substantive and defensible evidence on appeal to support the decision in all respects.
7. The reasons for refusal alleged that the proposal would harm the character and appearance of the area as a result of a loss of trees and adversely affect biodiversity as a result. However, for the reasons set out in my appeal

Decision, I have concluded that the proposal would not harm the character and appearance or significantly harm biodiversity.

8. Whilst there is an element of judgement involved in terms of the effect on character and appearance, the Council has not substantiated and evidenced its reasons for refusal with regard to the loss of trees and subsequent impact on biodiversity. The application was supported by an arboricultural report which made a professional assessment of the trees to be removed, including their quality and life expectancy. I therefore consider that the Council's refusal was not well founded, containing vague and generalised assertions about the proposal's impact, with the result that the Council has been unable to substantiate its refusal reasons at appeal. Furthermore, the Council failed to consider attaching an appropriately worded condition to address matters of biodiversity enhancement.
9. The Council asserts that they met all the timescales for submissions relating to this appeal. From the evidence before me I have no reason to disagree. Nevertheless, the claim for costs was not made on such grounds.
10. The applicant raises the Parish Council's continued pursuit of matters that have already been considered and determined during a previous appeal. Whilst I note that the Parish Council had some concerns regarding a cramped form of development these matters did not form part of the Council's reason for refusal. Accordingly, the applicant has not been put to unnecessary expense in defending such issues at appeal.
11. For the reasons set out above, I am of the view that unreasonable behaviour as described in the PPG has been demonstrated on the part of the Council and has resulted in the applicant's unnecessary expense in contesting the appeal. A partial award of costs is therefore warranted.

Costs Order

12. 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 King's Lynn and West Norfolk Borough Council shall pay to Mr Azam Gabbair, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting reason for refusal No 1 on the Decision Notice, which alleged conflict regarding biodiversity. Such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to King's Lynn and West Norfolk Borough 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.

R. Gee

INSPECTOR