



Costs Decision

Site visit made on 30 January 2024

by A J Sutton BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2024

Costs application in relation to Appeal Ref: APP/J1535/W/23/3322092 7 Brooklyn Avenue, Loughton IG10 1BL

- 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 Nooitgedacht for a full award of costs against Epping Forest District Council.
 - The appeal was against the refusal of planning permission for a proposed detached 3 bedroom dwelling in an existing side garden.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) sets out that irrespective of the outcome of an appeal, costs may only be awarded where a party has behaved unreasonably, in either a procedural or substantive way, which has directly caused another party to incur unnecessary or wasted expense in the appeal process. Examples of unreasonable behaviour include preventing or delaying development which should be permitted, failure to produce evidence to substantiate reasons for refusal on appeal and persisting in an objection to the scheme which an Inspector has previously indicated to be acceptable.
3. The PPG advises an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
4. The proposal subject of this appeal was refused planning permission by the Council, against the recommendation of the officer. The Council is not bound by officer recommendations. However, the proposal is a resubmission of a planning application which, following the Council's refusal of permission in that case was subject to appeal.
5. While that earlier appeal was dismissed, the grounds for dismissal in that case related to mitigation in respect of protected habitats. The Inspector, in that earlier appeal, found that the proposal would not harm the character of the area, and consequently there would be no conflict with development plan policies in respect of that matter.
6. The officer's report made it clear to the Council that the proposal that is now before me is identical to the proposal that the previous Inspector found

acceptable with regards character and appearance. As outlined in my appeal decision, I agree with the Inspector's conclusions on this matter.

7. However, despite the clear reasoning set out in the earlier appeal decision, the Council persisted with this same reason for refusal. Indeed, this is the Council's sole reason for refusal in this case.
8. While the Council references relevant development plan policies and the reason for refusal is precise, very limited information has been advanced that would challenge the previous Inspector's conclusion on this matter. Moreover, no material change in circumstances have been presented through this appeal process that would justify the Council persisting in this objection to the identical scheme, when an Inspector has previously concluded the proposal would be acceptable on these grounds.

Conclusion

9. In light of the above, I find no compelling evidence to justify the Council delaying development which should have been permitted. Accordingly, I find that the behaviour of the Council was unreasonable in this regard, and this has resulted in unnecessary and wasted expense in this appeal process. Therefore, a full award of costs is justified.

Costs Order

10. 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 Epping Forest District Council shall pay to Mr and Mrs Nooitgedacht, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to 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.

A J Sutton

INSPECTOR