The Planning Inspectorate

Costs Decision

Site visit made on 24 April 2024

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date:13.05.2024

Costs application in relation to Appeal Ref: APP/X1545/W/23/3325045
Brook Farm, Marsh Road, Burnham on Crouch, CM0 8LZ

- 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 Fowler Brothers Limited for a full award of costs against Maldon District Council.
- The appeal was against the refusal of planning permission for replacement of an existing farm butcher's shop known as 'The Secret Butchers' and associated parking facilities.

Decision

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

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. Paragraphs 047 and 049 of the PPG give examples of when the behaviour of a local planning authority may result in a procedural or substantive award against it.

3. The application was made on 18 January 2023. Following a request for details of the existing building, it was registered and allocated to a planning officer as confirmed by letter of 15 February 2023. In response to an email, the Council advised in March 2023 that the description of development would need to be amended to refer to the erection of a farm butchers. It had previously been described by the Council as the replacement of an existing farm butchers. Notwithstanding some to and fro about the matter, this was formally changed by the Council and re-consultation took place as advised on 6 April. The applicant's letter of 12 April 2023 set out objections to this course of action.

4. It is clearly preferable if any changes to the description of development used on the application form can be agreed. That was not the case here although the reasons for doing so were explained before it was done. In that the proposal involves a new building on an undeveloped site the Council's approach is understandable to a degree. However, there is no obvious reason why the fact that it was to replace an existing facility could not also have been included to provide clarity and to fully reflect what was proposed.

5. There is no evidence that the original description of "replacement" had caused confusion amongst consultees. The intention behind the proposal would have been obvious to anyone reviewing the supporting documentation and the plans. Therefore, deciding to re-publicise the application was heavy-handed and

unnecessary. Furthermore, given the previous application at the site as well as the submitted plans, it is surprising that it took a site visit for the Council to appreciate that the proposal would be in a different location to the existing shop. All of this delayed the determination of the application and the Council's actions in these respects fell short of what might reasonably be expected.

6. However, there is no indication that the change of description caused the Council to ignore the fact that the proposed building was to replace an existing facility. The officer report reflects this in various ways. As such, the full nature of the proposal was taken on board in the assessment of the application. Furthermore, the Council explained why it thought that the building could and should be located in an existing town or employment area. It was entitled to give greater weight to favouring somewhere within a settlement over the applicant's case that the building needed to be located on the farm holding. Whilst that part of the supporting submission could have been addressed in more detail, it was not an unreasonable stance for the Council to take.

7. Indeed, in the officer report and the appeal letter of 29 November, the Council has adequately substantiated its position and given reasons for the decision taken. The applicant disagrees with the findings made and though the appeal is to be allowed, this does not mean that there has been unreasonable behaviour. Certain aspects of the Council's actions in relation to the way that the proposal was described were unreasonable. However, even if the description had remained as originally couched, the outcome of the application would most likely have been the same and an appeal would have been made.

8. The Planning Statement accompanying the application noted that the retail use would be moved from flood zone 3 to flood zone 1. However, it goes no further than that. This point is not referred to at all in the officer report but it was not expressly put forward at that stage as a material consideration that favoured the scheme. The Council might nevertheless have been expected to pick up on this benefit. In any case, it is evident that this factor would not have swayed the Council to make a different decision.

9. There is criticism of how the views of the Strategic Theme Lead were portrayed in the report. However, the way this was done was not inaccurate and as the matter was decided under delegated powers the report writer would have been aware of the support expressed for business growth. A more justifiable complaint is that the potential economic benefits were not factored in and conspicuously weighed against the objections raised. That should have been done in order to properly fulfil the duty under section 38(6). But it is evident that even if such material considerations had been covered in the report, the application would still have been refused.

10. Therefore, unreasonable behaviour has occurred. This is due to the insistence on re-publicising the application and the hold up this caused. Furthermore, because of the failure to articulate the economic advantages and to balance those against the objections identified before reaching the decision. However, it is not apparent that this has resulted in unnecessary or wasted expense. As such, an award of costs is not warranted.

David Smith

INSPECTOR