



Costs Decision

Site visit made on 23 January 2024

by R Catchpole BSc (hons) PhD MCIEEM IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 May 2024

Costs Application in Relation to Appeal Ref: APP/D3505/W/23/3316955 at The Red Lion, The Street, East Bergholt, Colchester CO7 6TB

- 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 Peachey (Langham Property Company (Essex) Ltd) for a full award of costs against Babergh District Council.
 - The hearing was in connection with an appeal associated with the refusal of planning permission.
-

Decision

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

Reasons

2. The Planning Practice Guidance 2019 (PPG) advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour can either be procedural, relating to the process of an appeal or substantive, relating to the merits of any issues arising from an appeal.
3. The application for costs was made by the applicant with reference to a refusal to grant permission for the "construction of 5 no. dwellings, storage building with two bed and breakfast rooms for the hotel and brasserie, public convenience building (following demolition of existing toilet block) and alterations to a car park".
4. The applicant believes that the Council acted unreasonably in relation to a number of issues. Firstly, by introducing two new issues that were not part of its reasons for refusal. These relate to the loss of a coach parking area and a neighbourhood plan project (EB12). Secondly, by failing to engage in a timely matter over the negotiation of a planning agreement. Thirdly, by relying upon unfounded assumptions about the effect of the parking layout on deliveries to the public house and the operation of the public car park.
5. Taken together these perceived failings potentially risk an award of costs on procedural and substantive grounds because of the following alleged issues: the introduction of new evidence; a lack of co-operation between the parties; and a reliance on vague, generalised or inaccurate assertions about the impact of the scheme.
6. The Council states that the consideration of coach parking was an elaboration of an issue that had already been covered in the officer report and discussed at

Committee. As such, it disputes that the inclusion of this amounts to the introduction of new evidence as part of its statement of case. It adopts the same position in relation to the inclusion of Plan Project EB12 and also suggests that it was included to help me understand the importance of the car park to the local community.

7. The Council maintains that it was unaware of the applicant's attempts to negotiate a planning obligation initially because it was sent directly to the Council's solicitor. It also asserts that it was not obliged to enter into a bilateral agreement that would be detrimental to its policies. Had it entered into the agreement then there would have been a loss of area that would have been contrary to EB11, according to the Council. It stresses that its concerns centred on the loss of area rather than the loss of parking spaces which the agreement was seeking to resolve. As such, the planning agreement would not have rendered the reason for refusal 'obsolete' according to the Council.
8. The Council sets out the details of the timeline concerning the bilateral agreement and unilateral undertaking (UU). This is not disputed and I shall not repeat it here for the sake of brevity. It concludes that, on the 20 September 2023, the Council's solicitor advised the applicant that, given the contents of the appeal statement, she could not see how the matter could be resolved. The Council accepts that a draft bilateral agreement was first received on the 28 June 2023.
9. The Council states that the additional parking spaces that were shown on the plan were not accepted or placed before the Committee because it was not possible to seek expert advice to ensure that the new spaces would not pose a road safety hazard. It nevertheless noted that these spaces could affect the traffic flow through the village and pedestrian safety within the car park.
10. Whilst I accept that matters relating to coach parking and the status of the car park are in the officer report and were considered at the application stage, they were clearly not part of the reasons for refusal. Despite this fact, these issues were raised in the section of its appeal statement entitled "dealing with the reason for refusal". As such, they were substantive points relied upon by the Council even though they were not part of the legal or factual context of its refusal.
11. The Council acknowledges that a single coach parking bay was acceptable in its rebuttal statement, as well as its statement of case. However, the loss of an existing coach bay was nevertheless highlighted immediately after it was reported that there would be no loss of parking spaces. This close juxtaposition, as well as its inclusion at that particular point in the statement, left the applicant with no other choice but to address it. I also felt compelled to cover it, as well as matters relating EB12, in my decision for the same reasons.
12. As the applicant points out, the Council is under a duty to give full reasons in the decision notice for why an application is refused. The basis of an appeal necessarily relates to these reasons and not the broad ambit of an officer's report which could contain any number of ancillary issues that are not determinative. This is why Council's should produce succinct statements supporting the reasons for opposing a development and not seek to introduce new evidence unrelated to the reasons for refusal that have been given. A failure to do this undermines the efficient operation of the planning system and

the exercise of proper planning functions. Consequently, I find this to be wholly unreasonable behaviour.

13. Turning to the planning agreements, I note that the Council was first approached on the 28 June 2023 concerning a potential bilateral agreement and that it subsequently questioned the need for one on the 26 July 2023 because the obligations were not reciprocal. The Council has outlined a series of steps regarding both agreements up until the 20 September 2023, as already noted.
14. Although a period of three months to come to a final view over a simple obligation is far from ideal, it is clear that there was ongoing communication over this period, albeit punctuated by periods of leave. Consequently, I do not find that the Council behaved unreasonably in terms of a failure to co-operate. Whilst its glacial pace is at odds with the overall aim of the costs regime, I do not find it contrary to the specific grounds set out in the PPG.
15. The applicant suggests that the Council has relied on vague and generalised assertions in relation to the reasons it gave for not entering into a bilateral agreement owing to the fact that this would be detrimental to its adopted policies. The Council qualifies this in relation to a loss of area, as set out above, and I do not consequently find the behaviour unreasonable.
16. However, this is not the case in relation to the assertions about how the additional parking spaces might affect pedestrian safety and traffic flow through the village. By the Council's own admission, it did not seek the opinion of its own Highways department but nevertheless came to an adverse conclusion in its appeal statement concerning this matter. Although I do not find this evidence vague, it was generalised and unsupported by any objective analysis. As such, I find this aspect of its behaviour to also be unreasonable.
17. The PPG advises that an application for costs will need to clearly demonstrate how any unreasonable behaviour has resulted in unnecessary or wasted expense. In other words, the existence of unreasonable behaviour is not sufficient to justify an award of costs in and of itself. The behaviour must also directly cause another party to incur unnecessary or wasted expense in the appeal process.
18. As the Council saw fit to introduce new evidence there was an additional expense involved in addressing those issues. Although generalised assumptions were made regarding the impact of the additional parking, this was not addressed in any substantive manner by the applicant and therefore it did not lead to unnecessary expense.
19. I conclude that the Council acted unreasonably in relation to the matters set out above but that the appeal was necessary bearing in mind the lack of any completed obligation at the application stage which might have overcome the Council's concerns. As this relates to part of the appeal process, only a partial award of costs is justified.

Costs Order

20. 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 Babergh District Council shall pay to Mr Peachey (Langham Property Company

(Essex) Ltd), the partial costs of the appeal proceedings described in the heading of this decision.

21. The applicant is now invited to submit to Babergh 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.

R Catchpole

INSPECTOR