



Costs Decision

Hearing held on 8 May 2024

Site visit made on 8 May 2024

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2024

Costs application in relation to Appeal Ref: APP/K2610/W/24/3338463 Land at Mill Bungalow, Wood Green, Salhouse NR13 6NS

- 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 S Robinson and Mr P Adams for a full award of costs against Broadland District Council.
- The appeal was against the refusal of planning permission for erection of one dwelling.

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.
3. Paragraph 049 of the PPG provides examples of unreasonable behaviour by local authorities, including: preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material consideration; failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis; and, refusing planning permission on a planning ground capable of being dealt with by conditions where it is concluded that suitable conditions would enable the proposed development to go ahead.
4. The applicant alleges they incurred unnecessary or wasted expense through submission of a planning appeal and attending a hearing, which could have been avoided had the Council acted reasonably with regard to matters of living conditions, highway safety, and in securing measures to mitigate potential harm to designated habitats (European Sites).

Living conditions

5. The applicant asserts the first reason for refusal regarding living conditions of future occupants is not substantiated by evidence of conflict between residents and commercial uses.
6. However, the delegated report indicates the proximity of the proposed development to the industrial estate would lead to a detrimental impact on the living conditions of future occupiers due to the pedestrian and vehicle conflict that would arise from surrounding uses. The proposed dwelling would not be

served by segregated pedestrian facilities and the proposal fails to demonstrate how conflict between pedestrians and vehicles would be avoided. Therefore, the Council did not act unreasonably in imposing the first reason for refusal.

Highway safety

7. The applicant asserts the Council did not test the proposal against paragraph 115 of the National Planning Policy Framework (the Framework). However, planning law requires proposals be determined in accordance with the development plan, unless material considerations indicate otherwise.
8. The Council determined the proposal against Policy TS3 of the Development Management DPD 2015, which indicates development will not be permitted where it would result in significant adverse impact upon the safety of the highway network. I am therefore satisfied the policy encompasses the tests set out at paragraph 115 of the Framework.
9. The local highway authority (LHA) is the statutory consultee for matters relevant to the public highway and as such the Council afforded significant weight to the LHA's statement. The LHA identifies visibility at junctions and access points as one of the most important factors in terms of highway safety and indicates inadequate visibility from the site's access road onto Wood Green would increase the potential for collision and personal injury accidents. In addition, the LHA raises further safety concerns caused by the lack of pedestrian footway along the site access road which, combined with the oblique junction, adds additional complexity and risk. The LHA statement therefore clearly explains the proposed development would create an unacceptable impact on highway safety through the risk of collision and injury.
10. For these reasons, the Council did not act unreasonably in refusing the proposal on matters of highway safety, as stated in the second and third reasons for refusal.

Nutrient neutrality

11. The applicant suggests the Council acted unreasonably by sending an email regarding nutrient neutrality that failed to reference the application or material submitted with the planning application and failed to deal with correspondence in a timely manner.
12. The Council's email was not site specific and was intended to provide information relevant to many developments in the area. The appellant promptly requested an extension of time to allow for a scheme of nutrient mitigation to be identified by Norfolk Environmental Credits. However, this correspondence did not reach the case officer until after the Council issued its decision.
13. It is my understanding that no credit scheme presently exists via any provider to offset nutrients generated by development within the relevant catchment. Furthermore, there were other reasons for the Council's refusal of planning permission. Consequently, the delay in the receipt of correspondence by the case officer did not prejudice the outcome of the Council's decision. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense did not occur in respect of the fourth reason for refusal.

Recreational pressure

14. The Norfolk Green Infrastructure and Recreational Impact Avoidance and Mitigation Strategy (GIRAMS) advises that increased housing growth within the Broads Zone of Influence (ZOI) places additional recreational pressure on its constituent European Sites. To mitigate such effects, the GIRAMS requires all new residential development within the ZOI agree to a financial contribution secured through a Unilateral Undertaking (UU).
15. The applicant asserts that it was not informed of the GIRAMS by the Council in its pre-application advice. However, the GIRAMS was not in operation at the time the advice was issued. A subsequent application which was refused by the Council for other reasons contained reference to GIRAMS in the delegated report, and information was available through the Council's website.
16. Paragraph 55 of the Framework states local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. The applicant asserts that if they had been better informed about the GIRAMS they could have submitted a UU to provide the financial contribution, thus avoiding the need to address this issue during the appeal.
17. The GIRAMS UU is normally prepared by the Council. Had the Council required the applicant to enter into a UU, the proposal would have remained unacceptable on the basis of the other reasons for refusal. Therefore, the GIRAMS contribution would not have been sufficient to make the development acceptable, as a whole. In such circumstances, entering into a UU would place an unreasonable administrative burden on both parties. Therefore, I do not consider the Council acted unreasonably in respect of the fifth refusal reason.
18. A UU containing a planning obligation for the GIRAMS contribution was submitted during the appeal, which the Council confirmed prior to the hearing would provide suitable mitigation. Had the applicant been successful at appeal in overcoming the other reasons for refusal, the UU would have been necessary to address the recreational impacts of the proposed development. Therefore, the applicant did not incur wasted expense.
19. As set out above, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

E Dade

INSPECTOR