



Costs Decision

Site visit made on 14 May 2024

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2024

Costs application in relation to Appeal Ref: APP/C1570/W/23/3330213 Land to the North of Cornells Lane, Widdington, Essex CB11 3SG

- 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 Dr and Mrs M. Tee for a full award of costs against Uttlesford District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the erection of 4 no. detached dwellings and associated works.
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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 applicants say that the Council has acted unreasonably in that the appeal should not have been necessary; the Council has not reasonably defended its position; and both have led the applicants to incur unnecessary expense.
4. The PPG explains that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. This could be the expense of the entire appeal or other proceeding or only for part of the process. Further, it sets out that costs cannot be claimed for the period during the determination of the planning application and that all parties are expected to behave reasonably throughout the planning process. However, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
5. There is a considerable background to this application. I set out the relevant parts to provide context. The appeal to which this application for costs relates was made against the Council's failure to determine the planning application within the prescribed period ("the appeal scheme"). The appeal was lodged before the Planning Committee considered the proposal and the officer's report.
6. Prior to that, an appeal was dismissed on 30 January 2020, to construct 20 dwellings on the appeal site and adjoining land¹ ("the 2018 scheme"). Planning permission was then refused to build 15 dwellings on the appeal site and adjoining land² ("the 2020 scheme"). A scheme for four dwellings on the appeal

¹ Council Ref: UTT/18/0885/FUL

² Council Ref: UTT/19/2623/FUL

site was then refused by the Council and later withdrawn at appeal³ ("the 2022 scheme"). A planning application for the erection of four detached dwellings and associated works was then initially granted by the Council⁴ in October 2022, but this decision was quashed by a judicial review on 7 July 2023 ("the quashed decision") following a challenge by Widdington Parish Council.

7. As part of the 2022 scheme, a Statement of Common Ground (SoCG) was discussed and agreed between the applicants and the Council. Nevertheless, as the Council reasonably explained in its Appeal Statement, the appeal to which the SoCG relates was withdrawn before the appeal decision was issued. It is also the case that the SoCG predated the judicial review of the quashed decision. In that judgement, numerous points were made about how the Council had reached its view on matters relating to heritage assets and the fallback position. While the position adopted by the Council in the SoCG a matter of months earlier may be inconsistent with the one it now holds, the Council has explained why and differentiated between the two.
8. The appeal scheme was intended to be a stand-alone proposal to the quashed decision, which was to be re-determined by the Council. Both were due to be considered and determined by the Council's Planning Committee. Due to the history associated with the quashed decision, the applicants decided to submit the appeal scheme and asked for it to be considered and determined separately from the quashed decision.
9. It is for the Council to determine which Planning Committee agenda planning applications are placed on. That is their role and function as the local planning authority. The applicants may express a wish or preference, but the Council is not obliged to agree. The Council decided that the appeal scheme and the quashed decision were to be heard by the Planning Committee on the 27 September 2023.
10. In doing so, the applicants claim that they were denied an opportunity to enter into further dialogue with the Council to address any matters that came out of a refusal on the quashed decision, therefore avoiding the need for the appeal scheme to be considered by the Inspectorate.
11. Although parties are encouraged to discuss proposals and engage with one another to find solutions, equally, the Council needs to determine planning applications. Further, the Council's concerns are not said to relate to just minor amendments to the proposal. In any event, the applicants choose to withdraw the quashed decision scheme and submit a non-determination appeal for the appeal scheme. Those are the applicant's own actions. They could have left both applications with the Council to determine, but they didn't. I note the applicants point that this course of action followed a 'poorly handled' and 'hijacked' site visit by the Planning Committee, but there is no evidence before me explain what happened and why this led the applicants to appeal and withdraw their planning application.
12. Seemingly during the application (subject of the appeal) and shortly after the outcome of the judicial review someone allegedly wrote to the Head of Planning. The applicants suggest that the extract that I have before me shows that the individual, which they assume to be a high-ranking member of the

³ Council Ref: UTT/21/2137/FUL

⁴ Council Ref: UTT/22/2278/FUL

Council, was seeking to apply pressure to planning officers. There is a tacit reference to the Council's subsequent change of opinion on the proposal.

13. I do not have an original copy of the correspondence to confirm who the correspondence is from, who it was sent to, and whether the extract provided was its full content. There is also no evidence indicating that it was before the officer who considered the planning application, or that it had any bearing on their professional view. There is also no clear link between this text and how it directly caused unnecessary or wasted expense in an appeal.
14. Criticisms are levelled by the applicants at the Council's officer report. It is unclear which officer report is being referred to given that both the appeal scheme and the quashed decision were to be presented on the same agenda. Regardless, the alleged deficiencies relate to the planning application process, not the appeal. The Council also states that applicants' submissions were published on the public portal, even though they acknowledge that not all of them are specifically referred to in the officer report. That is fair. The critical part of the officer report is the analysis of the proposal to help members reach a decision, it does not necessarily need to cite every single document. However, I shall return to the issue of consistency and reasoning shortly.
15. Further critiques are made of the Council in terms of the Supplementary Report. It is a matter for the Council to determine how it informs members of the Planning Committee about the proposal and all the relevant points for them to consider. Given that the applicants decided to appeal before the Council could make its decision, this criticism has not caused unnecessary or wasted expense in the appeal process as that appeal was already submitted.
16. The Council considers that the SoCG is not a material consideration. Just because the applicants hold a different opinion does not necessarily mean that the Council has acted unreasonably. The key is that the Council has said why in a reasonable manner.
17. The appeal was lodged on 26 September 2023. Despite this, the appeal scheme was still considered by the Planning Committee on 27 September 2023. As part of the appeal process, the Council is expected to set out its position and its case. Given that the application had been placed on the Planning Committee agenda prior to the appeal being lodged, it is common practice for members of the Planning Committee to confirm what the Council's position would have been if it had been able to go on and determine the planning application. The Planning Committee minutes confirm that is what the Council did. In doing so, that enables officers to then prepare and submit evidence reflecting that position as part of the appeal.
18. Although the applicant's initial appeal documents were not before the Planning Committee when it debated the scheme, those documents reflect the applicant's case, not the Council's, and I consider that members would have been aware of the proposal and the considerations relating to the scheme based on the Committee Report. The minutes of the meeting also confirm what members discussed and questioned. That included the judicial review, the fallback position and heritage, among other things. It is suggested that members were given a legal briefing in private, but the Planning Committee minutes do not confirm this either way, though they do confirm that a councillor recused herself and left the meeting while the agenda item concerning the appeal scheme was discussed. Conversely, the applicants say

two members attended the private legal briefing, but the points made by the applicants amount to assertions and there is no substantive evidence to support the strong points made.

19. I do not have copies of the correspondence from the Council's Head of Planning or the lawyer, but on face value, that correspondence left the applicants with no time to attend the meeting or arrange oral representation. I understand that the applicants decided not to register to speak as they had decided to lodge an appeal, and on the basis that the application would be removed from the Planning Committee agenda given that the decision maker was now the Planning Inspectorate. The latter did not happen, and timely communication may have helped clarify how the Council was going to approach its Planning Committee meeting. However, even if this was unreasonable behaviour, it has not caused wasted time or expense during the appeal process given the appeal had already been lodged, and the applicants would have needed to support their case given that it differed from the Council's assessment of the appeal scheme in any event.
20. I do not have a copy of the Council's constitution, so I cannot reach a view on whether the Council acted in accordance with that or not by letting people speak at the meeting.
21. I am also unclear why the appeal would have been avoided if the Planning Committee had re-considered its position following a presentation by the applicants. The appeal had already been submitted by this point. That was the choice of the applicants, not the Council. Theoretically, the Council may have agreed with the applicant's suggestion to go through the Planning Committee process again, but the Council has a responsibility to use its time and money effectively. Given the substance and merits of each party's cases on key issues, it appears to me that even if the Planning Committee had re-considered the appeal scheme, disputes would have remained, and those matters would have probably resulted in submissions like those made during the appeal.
22. The fundamental issue raised by the applicants is the inconsistency of the Council's stance on the merits of the appeal scheme. In fairness, that has changed over time and during the several applications that have been submitted and considered on the appeal site.
23. The Council explained its stance and the reasons why it reached that view with respect to the fallback position within paragraph 14.4.13 its officer report. That explanation followed criticisms levelled at the Council in the judicial review judgement about its approach to that matter. The Council was within its right to review its approach, and it was plausible for the Council to come to the same view or a different one; the key is the explanation. Although the applicants may disagree with the about turn, that is not the same as acting unreasonably given that the Council's updated position was explained and reasoned.
24. The precise reasons why the consultation response on landscape matters seemingly changed from that provided for the 2022 scheme are unclear despite the identical access proposals, but the Council's officer report and appeal statement indicate that the Council's revised stance on the fallback position fed into that. This was a reasonable upshot of the Council's change of opinion.
25. The outcome of the Council's analysis after the judicial review judgement is that it considers the appeal scheme to cause harm to several heritage assets

and to conflict with the development plan in that respect. That is a consequence of its assessment. Inherently, considering heritage matters involves reaching a judgement. That judgement can differ from one professional to another. Even if there are chinks in that assessment, I am satisfied that the Council adequately explained its position with reasons why, having regard to the proposal and the chronology of events.

26. The parties have differing views on the weight that various development plan policies should attract. Even if a policy is out of date and carries a lesser degree of weight, a decision-maker still needs to reach a view on whether the proposal accords with it or not. The Council has set out its position on the policies concerned in its appeal statement.
27. The Council said that Policy S7 should be given significant weight as it reflects paragraph 180(b) of the National Planning Policy Framework (the Framework), despite part of the policy being inconsistent with the Framework. However, to my mind, the policy needs to be read as a whole to give it its proper meaning and application. If the Council had done so, in the face of its own Compatibility Assessment, and the applicant's evidence, which included various appeal decisions, it might have come to a different view. Whether it would have is irrelevant, as the Council has not explained why, despite the clear and contrasting evidence, which is not new, they held the view that they do. Although different judgements can be reached, they must be cogently explained. The Council has not done so here. That is unreasonable behaviour, and it has resulted in the applicants needing to refute the Council's stance during the appeal process.
28. The Council has set out why it considers Policy ENV9 to carry significant weight. Leaving the merits of those reasons to one side, the Council has not grappled with the appellant's evidence about this policy's inconsistency with the Framework and an appeal decision that explained that the policy should be afforded limited weight. In the absence of any reasoning to that effect, the Council has acted unreasonably, and it has resulted in the applicants needing to refute the Council's stance during the appeal process.
29. The first putative reason for refusal cites Policy ENV1 in respect of the proposal's harm to designated heritage assets. However, the conclusion in section B of the officer report does not refer to this policy. That flows from the Council's analysis that only part of the appeal site is within the Widdington Conservation Area (WCA), that most of the site is located adjacent to it, and the lack of any harm identified in respect of the part of the proposal that is 'within' the WCA.
30. Policy ENV1 relates to the 'design of development within conservation areas'. Evidently, the Council, despite its putative reason for refusal, did not consider the appeal scheme to conflict with this policy, as its officer report and appeal statement do not identify any. The Council has a duty and a responsibility to ensure that their reasons for refusal are clear and precise. As a result of the Council's imprecision, the applicants have needed to address this policy in their submissions, and the Council has not, at any time, sought to clarify the situation. That is unreasonable behaviour given that the applicant's statement of case stated that there was no conflict with this policy.

Conclusion

31. For the reasons set out, a full award of costs is not appropriate in this case as

the Council has not acted unreasonably in many of the alleged matters, however, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of matters relating to the Council's failure to produce evidence to substantiate its view in respect of development plan policies in light of views expressed about the same policies on appeal, and not reviewing their case following the appeal being lodged in light of reference to Policy ENV1. Hence, on this basis, a partial award of costs is warranted.

Costs Order

32. 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 Uttlesford District Council shall pay to Dr and Mrs M. Tee, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the applicant's expense of preparing and submitting evidence during the course of the appeal concerning the development plan policies outlined above; such costs to be assessed in the Senior Courts Costs Office if not agreed.
33. The applicants are now invited to submit to Uttlesford 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.

Andrew McGlone

INSPECTOR