



Costs Decisions

Site visit made on 11 July 2024

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 September 2024

Costs applications in relation to:

Appeal A Ref: APP/X3540/W/23/3328351

Appeal B Ref: APP/X3540/W/23/3329067

Apple Tree Barn (proposed name), Town Farm Lane, North Green, Kelsale, Saxmundham IP17 2RL

- The applications are 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 applications are made by Mr Alan Ambrose for a partial award of costs against East Suffolk Council.
 - Both appeals were against the failure to give notice within the prescribed period of a decision on an application for planning permission.
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Costs Decision – Appeal A

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

Costs Decision – Appeal B

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

Reasons

3. 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.
4. The PPG further specifies 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.
5. The applicant cites the Procedural Guide to Planning Appeals (the PG), which advises that the Local Planning Authority (the LPA) should not, normally, introduce additional policies or raise new issues beyond those in the reasons for refusal (or likely reasons if the appeal is against non-determination).
6. The PG sets out that the LPA must respond to the appellant's full statement of case, addressing the likely reasons for refusal where the appeal is against non-determination.
7. The applicant argues that the LPA has ignored both submitted statements of case and responded similarly to both appeals, despite significant differences

- between the proposals. The applicant also claims the LPA had previously indicated the Appeal A proposal would be acceptable.
8. Since both appeals were against non-determination, the applicant's statements of case outline what they believe the likely reasons for refusal would have been. No formal decision notice is available for either appeal, and the applicant's statements were based on the record of prior discussions on the applications.
 9. The PPG notes that if it is clear that the LPA will fail to determine an application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination, the LPA should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.
 10. For both appeals, the LPA submitted a statement at appeal stage, as required by the PPG, explaining why the applications would have been refused. While these statements do not fully align with the correspondence I have reviewed or the applicant's statements of case, they nonetheless indicate that both applications were likely to be refused. I have used this as the basis for the main issues in my accompanying appeal decisions.
 11. I have been provided with correspondence between the main parties during the period when the applications were under the LPA's consideration. An email from the LPA dated 26 July 2023 – a month and some weeks beyond the target determination date – suggests that the application subject to Appeal B would have been refused, while the application subject to Appeal A was likely to be approved. It appears no further correspondence from the LPA was forthcoming, and the applicant informed the LPA on 11 August 2023 of their intention to appeal against the non-determination of the applications.
 12. The evidence suggests that communication between the parties was largely driven by the applicant pursuing the LPA. It is also clear that the LPA repeatedly indicated that decisions were imminent, but these claims were not fulfilled.
 13. It appears that factors such as workload and staff departures contributed to the LPA's failure to determine the applications in a timely manner. However, I have seen no satisfactory explanation for why the noted deadlines were not met.
 14. For the reasons outlined above, I find that the LPA has indeed behaved unreasonably. However, the PPG is clear that for an award of costs to be justified, the unreasonable behaviour must have resulted in unnecessary or wasted expense during the appeal process.
 15. Based on the evidence before me, the issue of inconsistent plans was not raised by the LPA during the determination of either application. In my accompanying appeal decisions, I found this to be a critical issue. Had the LPA raised this issue during the application process, to my mind, this could have been addressed relatively simply. However, the applicant must also take responsibility for ensuring the submitted details were acceptable and capable of being secured through planning conditions.
 16. The inconsistencies arose from the submission of amended plans. While it seems that neither party noticed this issue before the appeals were submitted,

I cannot be certain that it would not have been identified had the LPA continued to determine the applications. Accordingly, I am not convinced that the LPA raising this issue at the appeal stage constitutes the introduction of an additional reason for refusal, nor does it amount to unreasonable behaviour that has resulted in wasted expense.

17. It is clear from the evidence that the Appeal B application would have been refused, meaning that the appeal, though it could have been lodged earlier, could not have been entirely avoided. Therefore, the expense involved in preparing the appeal would have been incurred even if the LPA had determined the application more promptly. As such, I do not consider that unnecessary or wasted expense has been incurred by the applicant in respect of Appeal B to warrant an award of costs.
18. Regarding Appeal A, the correspondence between 30 June 2023 and 26 July 2023 consistently indicates that the LPA was inclined to approve the application. At no point after the submission of amended plans did the LPA express significant concerns in respect of the scale or design of the proposal, or its effect on the setting of the nearby listed building, to indicate the application would be refused. Although the application was ultimately not determined, if the LPA had found the proposal unacceptable in these respects, there was ample time and repeated opportunities to raise these issues, as evidenced by the submitted correspondence. In my view, raising such concerns at the appeal stage goes beyond the likely reasons for refusal and conflicts with the provisions of the PG. On this specific issue, I find that the LPA has behaved unreasonably and has caused the applicant to incur unnecessary and wasted expense in the appeal process.
19. I have considered the other issues raised by the applicant, including the lengthy planning history, pre-application discussions, and the extensive evidence submitted in support of the proposals. However, I am not persuaded that there are other factors demonstrating unreasonable behaviour by the LPA.

Conclusion

20. Based on the information before me, I find that in the case of Appeal A, unreasonable behaviour resulting in unnecessary or wasted expense, as described by the PPG, has been demonstrated due to the introduction of an additional issue beyond the likely reasons for refusal, specifically concerning the scale and design of the proposal and its effect on the setting of the nearby listed building. Therefore, a partial award of costs is justified, limited to those costs incurred by the applicant in relation to this specific matter.
21. In the case of Appeal B, the issue concerning the scale and design of the proposal and its effect on the setting of the nearby listed building was consistently cited by the LPA during the application process and was a matter of planning judgement. I find no unreasonable behaviour regarding this issue.
22. For both appeals, I find that no unreasonable behaviour has occurred concerning the issue of inconsistent plans.

Costs Order

23. 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 East

Suffolk Council shall pay Mr Alan Ambrose the costs of the appeal proceedings described in the heading of this decision, limited to the costs incurred in contesting those aspects of the applicant's case set out in my conclusion above.

24. The applicant is now invited to submit to East Suffolk 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 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.

P Storey

INSPECTOR