



Costs Decision

Site visit made on 10 September 2024

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 3 October 2024

Costs application in relation to Appeal Ref: APP/J1915/W/24/3340086 Priory Farm, Levenage Lane, Widford, SG12 8RA

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by A S Clark & Sons for a partial award of costs against East Hertfordshire District Council.
 - The appeal was against the refusal of planning permission for the erection of four dwellings and associated landscaping.
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Decision

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

Reasons

2. The Planning Practice Guidance 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.

The Application

3. The Planning Officer (PO) refused to accept a revised Site Plan and amended Transport Statement to address Hertfordshire County Council Highways holding objection. This is contrary to Paragraph 38 in the National Planning Policy Framework (NPPF) which states "*Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible*".
4. The Appellant is seeking an award of costs in respect of the refusal to accept additional documentation that may have negated one of the refusal reasons.
5. The Planning Practice Guidance (PPG) details examples of unreasonable behaviour which may result in an award of costs, this includes of relevance 'lack of co-operation with the other party'. Paragraph: 047 Reference ID: 16-047-201403066

The Rebuttal

6. On 21 December 2023, the agent advised that they would be submitting further highways information in light of the comments made by The Highway

Authority. The PO advised that the application as a whole was still being assessed and could not confirm whether amendments would be acceptable/appropriate. The agent agreed to this. On the 25 January 2024, the PO emailed that there was an in-principal objection, the recommendation was for refusal and the proposed amendments would not reverse this.

7. The determination of the application was due on 30 January 2024, and an extension of time was not suggested. The highway authority would also have needed to be re-consulted on the scheme with no certainty that the amendments would be acceptable. The council corresponded with the agent throughout and advised them of the recommendation. The applicant chose to produce amended plans and documents without an invitation or discussion.
8. Deciding to proceed with a decision does not amount to unreasonable behaviour. The applicant should have ensured sufficient information prior to submission. A second fee-free application could have been made in an attempt to overcome the highways refusal reason, but no application was submitted. The appellant has not incurred any unnecessary or wasted expense as the appellant would always have received the in-principal refusal with the resultant need to appeal. As such, the council did not act unreasonably.

Conclusions

9. The basis that the council refused to accept these documents was that the application was to be refused on the policy objection dealt with in the first refusal reason, and that the revised plan and Transport Statement would have no effect on that.
10. The applicant points to the advice in paragraph 38 of the NPPF, and the reference in the PPG to a lack of co-operation as an example of unreasonable behaviour. But it appears that there was a degree of dialogue between the parties. The council suggests that a free second application could have been made, using the revised plan and Transport Statement. There would be every prospect that a second application would be decided rather more quickly than an appeal. It appears that a second application would have resulted in a refusal, based on the policy reason, so that a subsequent appeal would seem inevitable, albeit perhaps dealing with just one refusal reason.
11. I note that the work of providing a revised plan and the Transport Statement had already been done, and the costs of that incurred. There was thus little in the way of extra costs to make the appeal.
12. My conclusion is that there was no unreasonable behaviour by the council in refusing to accept the new documentation at the stage that it was offered. Therefore the appellant was not put to unnecessary or wasted costs as a result of unreasonable behaviour.
13. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Terrence Kemmann-Lane

INSPECTOR