



Costs Decision

Site visit made on 1 October 2024

by A Caines BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2024

Costs application in relation to Appeal Ref: APP/J1535/W/24/3337933 16 Eleven Acre Rise, Loughton IG10 1AN

- 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 Declan O'Driscoll for a full award of costs against Epping Forest District Council.
 - The appeal was against the refusal of planning permission for "Demolish existing house. Replace with 2 detached houses" without complying with a condition attached to planning permission Ref EPF/1508/18, dated 15 July 2021.
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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 appeal planning application sought to replace the previously approved plans with new plans retrospectively. In this type of application, the Council as Local Planning Authority must only consider the disputed condition, it is not a complete re-consideration of the application. The previous planning permission will remain intact and unamended. The effect of the proposal should therefore have been assessed against the baseline of the previous permission. There is little evidence before me that the Council, or more specifically its Planning Committee, followed this approach when it refused the application against officer advice.
4. Whilst a planning committee is entitled to make decisions that are contrary to the officer recommendation, there is an expectation that where this occurs it should show reasonable planning grounds for taking a contrary decision and produce sound, substantive and defensible evidence on appeal to support the decision in all respects. This did not occur.
5. The first reason for refusal stated that the increase in height to 'House A' was excessive. The subsequent explanation given for reaching this view was that 'House A' no longer respected the rising topography and height of neighbouring properties. However, these arguments dissolve almost instantly upon inspection. It is clear to see when visiting the site that the pattern of houses stepping up the hill has been suitably maintained. It is simply not credible to suggest otherwise. As is apparent from my conclusions in relation to the appeal, I found that the height and overall size of 'House A' is in keeping with its surroundings and that no material harm had been caused to the

street scene. As such, this was an inaccurate assertion about the proposal's impact and has not been adequately substantiated.

6. The second reason for refusal refers to excessive overlooking and loss of visual amenity at 17 Eleven Acre Rise. This was vague, and it was only clarified at the appeal stage that the concern was in relation to the change to the balcony balustrades from vertical railings to glass panels. In particular, it was asserted that vertical railings would provide a better screening benefit to No 17. However, it is difficult to comprehend how any objective analysis would support such a conclusion and it has not been demonstrated that screening was necessary to avoid a harmful impact. Furthermore, no evidence has been provided to substantiate why the change would be more objectionable in visual amenity terms. I found that the change to the balustrades was not visually harmful and did not make any material difference to the levels of privacy at No 17 compared to the previous permission. As such, this was a vague, generalised, and inaccurate assertion about the proposal's impact and has not been adequately substantiated.
7. The third reason for refusal cited the lack of a Section 106 agreement to secure a financial contribution to mitigate the effect of the development on the Epping Forest Special Area for Conservation (SAC). Yet, the requisite sum had already been paid under the previous planning permission. As the appeal scheme did not propose any uplift in the overall house numbers across the site, it would not lead to any increased air pollution or recreational pressure on the SAC. Consequently, it did not trigger any additional contributions over and above those that had already been secured by the previous s106. This was a position later accepted by the Council. The inclusion of this matter as a refusal reason was therefore patently unreasonable, notwithstanding it did not draw specific objection from the applicant.
8. Overall, I conclude that the actions of the Council fall squarely within the examples of unreasonable behaviour set out in the PPG. The unreasonable behaviour led directly to the need for the appeal. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

9. 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 Epping Forest District Council shall pay to Declan O'Driscoll, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Epping Forest 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.

A Caines

INSPECTOR