



Costs Decision

Site visit made on 1 October 2024

by E Catcheside BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th October 2024

Costs application in relation to Appeal Ref: APP/C1570/W/24/3339429 Land East of Porters, Watch House Green, Felsted, CM6 3EF

- 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 Darren Stevens for a full award of costs against Uttlesford District Council.
- The appeal was against the refusal of the Council to grant planning permission for *"outline application for the construction of five detached dwelling and garages using existing access off the Braintree Road, with only access considered"*.

Decision

1. The application for a full 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 claimant to incur unnecessary or wasted expense in the appeal process. It goes on to state that local planning authorities are at a risk of an award of costs if they behave unreasonably with respect to procedural matters, which could include withdrawing a reason for refusal or introducing a new reason for refusal.
3. The application is made on procedural grounds on the basis that the Council introduced a new reason for refusal at appeal stage. In its appeal evidence, the claimant also states that the Council could have resolved its substantive ecological concerns, which were the sole reason for refusal on the decision notice, during the application stage.
4. I acknowledge the applicant's frustration that the Council did not agree a further extension of time to allow for the submission of additional ecological information before it determined the application, as it could have done so. However, the local planning authority has discretion as to whether to accept amendments to an application after it has been submitted¹. Therefore, that the Council did not extend the determination period to allow for additional information to be submitted does not amount to unreasonable behaviour.
5. In withdrawing its original reason for refusal, the Council took account of information that was not available when it determined the planning application. Consequently, there is clear justification for the Council's change of position on ecological matters. It therefore behaved reasonably in this respect.

¹ PPG Paragraph: 061 Reference ID: 14-061-20140306, revision date 06 March 2014

6. The Council's explanation for introducing a new reason for refusal is that it did not know the applicant owned both the appeal site and the adjacent site at the time the application was determined. Accordingly, the proposal was considered as a stand-alone development and affordable housing was not secured.
7. However, the site area and land ownership information are included on the application form, and the adjacent site is clearly included within the blue line shown on the submitted site plan. Moreover, concerns about affordable housing provision across the two sites were raised in the third-party representations listed in the Officer Report. I therefore have no reason to conclude that the Council did not have sufficient information before it at the planning application stage to consider the need for affordable housing, or that information was deliberately withheld or concealed by the applicant. Despite this, the Council omitted to undertake any reasoned analysis of the issue in its consideration of the application. Therefore, that this issue was raised during the appeal process amounts to unreasonable behaviour. In coming to this view, I have had regard to an appeal decision submitted in evidence by the claimant².
8. The applicant has undoubtedly incurred additional expense in the preparation of a revised planning application, which sought to address the original sole reason for refusal. However, an award of costs is only granted where the unreasonable behaviour has resulted in unnecessary or wasted expense being incurred during the appeal process.
9. Whilst the decision notice was not revoked, the applicant was aware of the Council's new concern, which had been raised in connection with a revised application for the development, prior to the appeal being submitted. The Council also informed the applicant at an early stage of the appeal process that its concerns about affordable housing would be raised in its evidence. The appellant has had an opportunity to comment on the Council's evidence, including another appeal decision³, as part of the appeal process. Nonetheless, the applicant has not provided any substantive evidence in relation to the new issue in its final comments. I am therefore not persuaded that the Council's behaviour has resulted in extra expense being incurred.
10. Moreover, had the Council identified its concerns about affordable housing before the application was determined, it would have refused the application for that reason. Therefore, if the applicant wished to seek an alternative outcome, they would have needed to submit an appeal in any case. I agree with the Council's assessment that the appeal proposal is not exempt from affordable housing provision, and I have therefore dismissed the appeal. As the proposal is contrary to the development plan, it does not constitute development that should clearly be permitted.
11. In conclusion, the Council has behaved unreasonably. However, it has not resulted in unnecessary or wasted cost being incurred during the appeal process. Therefore, an award of costs is not warranted.

E Catchside
INSPECTOR

² Costs applications in relation to Appeal Refs: APP/Y0435/W/21/3275159, APP/Y0435/W/21/3275162 & APP/Y0435/W/21/3275164, dated 06 December 2021.

³ Appeal Decision Ref. APP/C1570/W/15/3139741, dated 28 June 2016.