



Costs Decision

Hearing held on 30 and 31 July 2024

Site visit made on 31 July 2024

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2024

Costs application in relation to Appeal Ref: APP/B1550/W/24/3341842 The Retreat, Lincoln Road, Rochford, Essex, SS4 3AF

- 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 Stephen Kerry for a full award of costs against Rochford District Council.
 - The appeal was against the refusal of planning permission for the mixed use of the keeping of horses and of stationing of caravans for residential use and laying of hardstanding and erection of dayroom ancillary to that use.
-

Decision

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

The submissions for Mr Stephen Kerry

2. The costs application was submitted in writing at the hearing.

The response by Rochford District Council

3. The response was made orally at the hearing. The Council set out that the planning committee had chosen to refuse planning permission for the reasons set out within the decision notice, and the Planning Committee can make that decision.
4. The Council has stated the reasons for refusal and policies contained within the decision notices and during the appeal. They do not consider they have acted unreasonably during the course of the appeal.

Reasons

5. 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.
6. It states examples of unreasonable behaviour include (i) preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; (ii) failure to produce evidence to substantiate each reason for refusal on appeal and (iii) vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

7. The Council do not consider that they have behaved unreasonably and point out that the Planning Committee is entitled to come to an alternative view to the officers' recommendation. It is submitted that the Committee acted reasonably in weighing up the various aspects of the case.
8. I accept that the Council have correctly identified that a Planning Committee decision which goes against officer advice is not a reason to give an award of costs. As the Committee were entitled to come to their own conclusions on the merits of the proposal.
9. Therefore, a key issue is whether the Council have provided sufficient evidence to substantiate their reasons for refusal at appeal. The first and fifth reasons for refusal set out in the decision notice are complete, precise, specific and relevant to the application. They also clearly state the policies that the proposal would be in conflict with.
10. However, the second reason for refusal, which sets out that there would be a negative impact upon residential amenity given the relationship with the existing nearby grouping of residential dwellings, was neither specific or precise and in particular there was a lack of evidence provided as part of the appeal process to substantiate this reason for refusal.
11. The Council have failed to provide any evidence in relation to the background noise levels at the site, or any indication of the level of noise that would be generated by the proposed development.
12. Particularly, given the officers recommendation was overturned at Planning Committee, the lack of evidence provided in defending the appeal meant that the applicant was disadvantaged in responding to the appeal, and the Council could only provide a vague, generalised assertion regarding the impact of the development on residential amenity, which was unsupported by any objective analysis.
13. The Council withdrew its third reason for refusal, which was not supported by any objection from the council's highway advisor. However, this was after correspondence between the parties following the appellant having to employ a highway consultant. The Council therefore failed to substantiate its third reason for refusal.
14. The Council's fourth reason for refusal was in connection with surface water flooding. It was agreed at the hearing that this matter could be satisfactorily dealt with by a planning condition and would secure the mitigation that was set out within the flood risk assessment. I am satisfied that the requirement for a flood risk assessment was reasonably necessary in order to provide certainty however, the Council failed to promptly review their case on receipt of the flood risk assessment or to consult the Local Lead Flood Authority. This may have avoided the need for the attendance at the hearing of the flooding engineer.
15. I turn, then to the matter of wasted expense. In lodging the appeal, and in responding to the Council's reasons for refusal, the applicant has had to respond to the appeal with limited evidence from the Council and a degree of uncertainty as to the substantive evidence available, in particular in relation to the second and third reason for refusal. This has been in terms of the preparation of the statement of case, including the need to employ a highway consultant and time spent negotiating with the Council on this reason for

refusal, preparation of the statement of common ground and the attendance at the appeal hearing. There was also wasted expense in terms of the need for the attendance of the flooding engineer as at the hearing the Council agreed that the mitigation could be secured by condition and this could have been resolved through the statement of common ground.

16. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a partial award of costs is therefore warranted in respect of the costs arising from providing a defence to the Council's second and third reason for refusal and costs arising from the attendance of the appellant's flooding engineer at the hearing in connection with the fourth reason for refusal.

Costs Order

17. 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 Rochford District Council shall pay to Mr Stephen Kerry the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the Council's second and third reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is now invited to submit to Rochford 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.

G Pannell

INSPECTOR