



Costs Decision

Site visit made on 4 November 2024

by H Marriott MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 December 2024

Costs application in relation to Appeal Ref: APP/D0515/W/24/3344263 41 Queens Road, Wisbech, Cambridgeshire PE13 2PE

- 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 Tom Barrett (Barrett Properties) for a full award of costs against Fenland District Council.
 - The appeal was against the refusal of planning permission for development originally described as 'a proposed HMO of a maximum of 8 bedrooms for a maximum of 12 people, including off road parking and bin storage including the demolition of existing garage and formation of an access'.
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Decision

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

Reasons

1. 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.
2. Unreasonable behaviour on the part of a Council may include failure to produce evidence to substantiate each reason for refusal or vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
3. The costs application is made on the basis that the Council has acted unreasonably in refusing planning permission. The applicant suggests that the Planning Committee failed to have regard to planning law and the recommendation of the planning officer to approve the application. Furthermore, the applicant contends that the reasons for the Council's decision are not at all obvious and are difficult to comprehend with inaccurate and incorrect assertions made which overstate and exaggerate the harm identified with no evidence or rationale to justify their reasoning.
4. The Council are entitled to take a decision contrary to the advice of its professional officers and that in itself is not grounds for an award of costs. However, in any appeal the Council must produce evidence to substantiate its decision.
5. The Council's statement of case draws attention to the committee report and subsequent planning committee minutes as forming the main arguments behind the Council's decision to refuse the planning application. Given that the Officer recommendation in the Committee report was to approve the planning

application, this clearly does not constitute evidence that substantiates the Council's reasons for refusal. Moreover, the planning committee minutes summarise the general discussions and do not set out the reasons with any clarity or precision. Notably, the minutes also suggest that the Council's legal officer advised that the Council would have difficulty in defending a claim for costs in the event of an appeal should their reasons not be demonstrated with evidence, given the response from consultees.

6. In the absence of an objection from the Local Highways Authority or any substantive technical or expert evidence to demonstrate risks to identify highway safety risks or a shortage of parking in the area including any shortfall in any relevant parking standards, the Council has failed to substantiate how the appeal proposal would result in any highway safety issues referred to in reason 1.
7. Whilst the Council's statement of case refers to the effect of the provision of parking spaces, it fails to explain precisely why the Council consider this would be harmful to the built environment as referred to in reason 2.
8. Finally, the Council have not substantiated the amenity harm arising from reason 3 at all within their statement of case, including what they meant by 'limited amenity space' or what 'the noise and disturbance impacts' would consist of within their statement of case.
9. Therefore, the Council's decision is vague and generalised. Whilst the reasons for refusal reference development plan policies, this alone is not sufficient to identify any site-specific harm identified. Moreover, whilst I have dismissed the appeal due to harm relating to Reason 3, my assessment was based on all of the evidence available to me including my own observations on site, the submitted plans and the comments received from all interested parties. This does not excuse the Council from the need to clearly substantiate its decision. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and an award of costs is warranted.

Conclusion

10. I conclude that unreasonable behaviour by the Council, as described in the PPG, has been demonstrated. Consequently, the application for a full award of costs is approved.

Costs Order

11. 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 Fenland District Council shall pay to Tom Barrett (Barrett Properties), 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.
12. The applicant is now invited to submit to Fenland 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.

H Marriott

INSPECTOR