



Costs Decision

Hearing held on 30 October 2024

Site visit made on 30 May and 30 October 2024

by Jennifer Wallace BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2024

Costs application in relation to Appeal Ref: APP/M1520/W/23/3330878 Walsingham House, Lionel Road, Canvey Island SS8 9DE

- 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 Sean Tappenden of SJT Developments Ltd for a full award of costs against Castle Point Borough Council.
- The appeal was against the refusal of planning permission for Proposed Phase 2 to application 21/0688/Ful to provide 13 NO Flats and 20 No Residential Houses'.

Decision

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

The Submissions of the Parties

2. The applicant's claim, the Council's response and the final comments of the application were all made in writing following the submission of the appeal. However given the changes in circumstances during the course of the appeal, it was necessary for further points to be made orally at the hearing.

Reasons

3. 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.
4. The applicant contends that an award of costs is justified on procedural and substantive grounds. Having regard to the advice in the PPG, I consider the applicant's grounds all relate to substantive grounds as it is not procedurally improper for the planning committee to reach a different view to their officers.
5. The applicant's case is essentially that the Council has prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations, that the Council failed to produce evidence to substantiate each reason for refusal on appeal, made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis and did not have proper regard to a matter for which permission had already been gained.
6. The Council responds that a sustainable location is not defined within policy and that the planning committee were entitled to reach a different conclusion to officers. While these both may be true, it remains the case that reasons for refusal must be capable of being fully justified at appeal.

7. Concerns relating to the effect of the proposal on protected species were examined in the officer report and addressed. It was also set out that a protected species licence would also be required for the works. No explanation for the harm that would arise from the lack of parking from the flats was provided, despite the detailed explanation in the officer report which justified a lower provision of parking for the flats. There is no explanation as to how the density of the site would have an unacceptable impact on the living conditions of future occupiers or the character and appearance of the area against the clearly set out position of planning officers contained within the officer report. The officer report also clearly sets out that there was no policy basis upon which to seek open space. In this case, no substantive evidence was put forward at appeal to justify departing from the advice of planning officers.
8. The fact that planning permission had been granted for the access road would not lead me to find unreasonable behaviour on the part of the Council as that would not materially impact on any of the reasons for refusal.
9. I find that the Council has behaved unreasonably in delaying development which clearly should have been permitted having regard to the development plan, national policy and other material considerations. No evidence was produced to substantiate each reason for refusal and those reasons made vague, generalised and inaccurate assertions about a proposal's impact, which were unsupported by any objective analysis. This is borne out by the Council's subsequent approval of an identical proposal. The appellant has therefore been put to unnecessary expense.
10. However, as set out in the other costs decision in this case, the Council's unreasonable behaviour ended at the point when planning permission was granted for permission 24/0042/FUL granted 4 June 2024. As such, only a partial award of costs is justified.
11. The amount of the costs claim is not a matter for this decision. However, the applicant should be aware of the advice in the PPG¹ that awards cannot extend to compensation for indirect losses, such as those which may result from delay in obtaining planning permission.

Conclusion

12. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the actions of the Council until 4 June 2024 and a partial award of costs is therefore warranted.

Costs Order

13. 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 Castle Point Borough Council shall pay to Mr Sean Tappenden of SJT Developments Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in connection with the appeal until 4 June 2024; such costs to be assessed in the Senior Courts Costs Office if not agreed.

¹ 'Appeals' Paragraph: 032 Reference ID: 16-032-20140306 Revision date: 06 03 2014

14. The applicant is now invited to submit to Castle Point Borough 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.

Jennifer Wallace

INSPECTOR