Planning Inspectorate

Costs Decision

Site visit made on 5 December 2024

by L N Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th January 2025

Costs application in relation to Appeal Ref: APP/C1570/W/24/3350438
Land East of Chelmsford Road, Felsted, Essex CM6 3XQ

- 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 Felsted Place Limited for a partial award of costs against Uttlesford District Council.
- The appeal was against the failure of the Council to issue a notice of its decision within the prescribed period on an application for planning permission for a new cemetery and associated infrastructure.

Decision

1. The application for an 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 party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The applicant contends that the appeal was unnecessary because the Council should have determined the application within the relevant timeframe and because there was no conflict with the Felsted Neighbourhood plan (FNP). They also contend that matters relating to the Council's late publication of the officer report was unreasonable on procedural grounds.

4. The Council did not determine the application for 8 months. Reasons for this delay are cited as staff illness and IT system issues, as well as consultation response times. However, on the basis of the very limited details provided, these matters do not appear out of the ordinary in the context of the normal determination process. Unreasonable behaviour was therefore displayed. However, this does not indicate that wasted expense in the appeal process has occurred. An earlier decision would still have led to a refusal, and thus the appeal would still have been necessary.

5. The parties disagree as to the planning merits of the case and its compliance with the development plan. I found similarly to the Council that there would be conflict with Uttlesford Local Plan (LP) policies. Although unlike the Council I found no conflict with the FNP Policy FEL/VA4, this main issue incorporates matters of planning judgement relating to the need for the cemetery. In making that judgement, the Council was entitled to place more weight on the Parish Council response than I did. The appeal was therefore not unnecessary on these grounds.

6. Paragraph 2.1 of the Council's Statement of Case (SoC) stated that it would rely primarily upon its delegated officer report, a copy of which had been sent to the Planning Inspectorate alongside the Council's questionnaire. This is factually incorrect, as the officer report date is 7 October 2024 which is the same as the SoC submission rather than the questionnaire submission of 9 September 2024. No report was sent at either stage. As such, this is a procedural fault, which the Council identifies was caused by a combination of human and system error.

7. The applicant states they were not expecting an officer report as it was an appeal against non-determination, and that they had started drafting their Final Comments (FCs) based upon the documents submitted at questionnaire stage. However, it is not unusual for a Council to produce and rely on an officer report in such appeal cases. The Council is also not expected to provide its comprehensive evidence at questionnaire stage. The questionnaire identified that a SoC was not attached, and that the Council intended to submit one. The SoC was submitted by the required deadline, with a timetabled further 2 weeks for the applicant to respond with FCs.

8. The Council's actions, other than not submitting the officer report alongside its SoC, thus aligned with the normal appeal procedure process and timetable. The Planning Inspectorate notified both main parties 2 weeks later that the report had not been received. Notwithstanding this, the applicant had already responded to the report in their FCs.

9. The applicant identifies that their FCs required a significant last-minute redraft after accessing the officer report, and that this caused wasted expense. However, this does not appear to me to have been entirely due to the Council's actions. While early preparation is commendable, it was clear that the putative reasons for refusal and the Council's justification would be unavailable until the SoC stage. Furthermore, the applicant did not contact the Planning Inspectorate to query the missing report on receipt of the Council's SoC, whereby the issue could have been resolved and additional time provided. Nor did they raise the issue at the point of discovering the report for the first time, to request additional time or to suggest that it should not be accepted due to being late evidence.

10. The applicant also identifies that they accessed the officer report via the Council's website by chance, causing additional expense, and denying them the full statutory time to consider the Council's documents. However, I do not see how accessing the report in this way would be onerous or lengthy, particularly because the applicant identifies that they had already accessed the system to prepare their FCs. Similarly, although the applicant references additional costs in repeating the review of all the questionnaire documents in a futile search for the report, I do not see how this would take more than minimal time. The list of submitted documents is clearly identified and labelled within the questionnaire.

11. Therefore, although it was procedurally unreasonable of the Council not to submit the officer report to the Planning Inspectorate by the SoC deadline, overall I do not find that wasted expense in the appeal process occurred from this matter.

12. The applicant also identifies that this late identification of the officer report impacted on their ability to meet the timely submission for costs. As I have accepted their costs submission and find it to be suitably comprehensive, this is not a determinative matter.

Conclusion

13. Overall therefore, I conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process as described in the PPG, has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is not justified.

L N Hughes

INSPECTOR