



Costs Decision

Hearing held on 21 January 2025 and 6 February 2025

Site visit made on 21 January 2025

by Joanna Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 February 2025

Costs application in relation to Appeal Ref: APP/X1925/W/24/3351486 Land to the West of High Street, Barkway, Hertfordshire SG8 8ED

- 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 Edit Residential for a full award of costs against North Hertfordshire District Council.
 - The appeal was against the refusal of outline planning permission for the erection of 6 no. dwellings with access, parking and associated works.
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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. Costs awards may be procedural, relating to the appeal process, or substantive, relating to planning merits.
3. The PPG outlines behaviour which may give rise to a costs award against a local planning authority. This includes 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; failure to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact, unsupported by any objective analysis.
4. The applicant considers that the Council behaved unreasonably and caused unnecessary or wasted expense in the appeal in relation to the extent and quality of engagement between the applicant and the Council's Senior Conservation Officer (SCO) and Environmental Health Officers (EHO) following the application's submission. Despite the applicant's repeated attempts to arrange meetings, relevant officers declined the opportunity for dialogue. The applicant considers that opportunities were missed to engage in discussion, which could have provided valuable clarity and potentially resolved key issues. The applicant considers that this contradicts the proactive and collaborative spirit encouraged by paragraph 39 of the National Planning Policy Framework.
5. The Council's SCO provided two consultation responses on 26 June and 7 November 2023. The second response was made following a rebuttal from the applicant's heritage consultant.

6. While the applicant asserts that the SCO focused on issues unrelated to heritage, the SCO's first response included reference to nearby relevant planning decisions and to their view that the proposed development would increase the likelihood of the remainder of the scrubland coming forward, with potential for further impact on the conservation area. This was not unreasonable.
7. The SCO's views were reiterated in their second response in respect of the adjacent land being more likely to come forward for development if the proposed development took place. However, I see no indication in the Council's committee report that this view influenced the Council's decision. While the applicant finds the SCO's view to be farcical, this is a significant exaggeration of what appear to constitute two standard consultation responses.
8. Though the SCO refers to the 'agrarian' setting, the SCO does not state that the site itself is agrarian. Although the SCO's second response does not refer to the conifers and the poultry farm apart from quoting the applicant's rebuttal, there is a swathe of countryside beyond the poultry farm, which can be seen from Buckland Road. Fundamentally, the SCO has responded on heritage matters within their purview. Their responses are neither unfair nor biased. This was not unreasonable behaviour and did not give rise to unnecessary or wasted expense in the appeal process.
9. The Council's Environmental Health Officer (EHO) issued three responses while the planning application was being processed. The EHO's first response dated 9 May 2023 refers to the 2017 appeal. This is not surprising given that the 2017 appeal dealt with odour. The EHO's first response also finds the desk-based and odour modelling exercise within the odour assessment to be inadequate. While the EHO's first response is not clear in addressing the proposed development's design and layout, this is not unreasonable as the application was in outline with all matters except access reserved. The layout would not have altered the EHO's first response that there was insufficient detail.
10. Following the EHO's first response, a field odour survey was undertaken. The EHO's second response dated 7 November 2023 refers to the field odour survey and the 2017 appeal in a fairly limited fashion. The applicant undertook considerably more odour impact assessment work than was submitted for the 2017 appeal in terms of types of assessment and the timing of surveys with the growing cycle. However, the extent of the assessment work was not fully addressed by the EHO's second response and it was not clear what the outstanding issues were with the applicant's odour assessment work. The EHO's third response was dated 5 December 2023 and refers back to the two earlier EHO responses. This deals with the field odour survey, the complaint from a local resident in May 2023, and potential effects from flies.
11. The applicant made at least six unsuccessful requests for either virtual or in-person meetings with Environmental Health to discuss odour testing and related submissions. While this will have been frustrating, it is clear that I agree with the decision reached by the Council. As such, the Council's handling of the odour assessment work and the Council's eventual decision has not led to an unwarranted reason for refusal.
12. The applicant submitted a costs application addendum on 29 January 2025. The crux of this was that the Council's failure to re-consult on the applicant's

- amended scheme represents procedural unreasonable behaviour due to the wasted resources expended.
13. The application was submitted for six market houses on 1 March 2023. The application was consulted on and processed by the Council on that basis. Approximately one month prior to the application being discussed at the Council's Planning Committee, the applicant chose to submit the amended scheme of five self-build homes and one affordable home on 12 February 2024 by email. This was not subject to public consultation. No amended application form was submitted. I outlined my concerns regarding the lack of consultation on the amended scheme with the main parties prior to and during the hearing.
 14. The Council argues that the three reasons for refusal are tenure-blind. The applicant is professionally represented by planning consultants. The applicant could have submitted an amended application form and could have requested that the amended scheme was subject to further public consultation and that the planning application was deferred to a later Planning Committee meeting for consideration. No such request was made.
 15. While the applicant has incurred costs in commissioning expert evidence on self-build, it was the applicant's choice to commission self-build evidence and bring a self-build specialist to the hearing. With regard to the additional hearing day, I had already indicated on 13 December 2024 that an additional day might be required for the site visit. In order to allow the applicant the opportunity to prepare properly for the final main issue, I offered the opportunity to sit on a second day. The applicant confirmed that they would appreciate that opportunity. This was not unreasonable.
 16. The applicant considers that the Council's failure to consult on the amended scheme has resulted in the original proposal being determined at appeal, with the resultant failure to consider the amended scheme's planning merits. This in the applicant's view has given rise to unnecessary delay in the planning process as a further planning application for self-build and affordable housing would need to be submitted.
 17. Notwithstanding my findings on the appeal's first three main issues, the weighting of the proposed development would have likely differed from the original proposal due to the benefits stemming from provision of self-build and affordable housing. However, no unnecessary delay was caused as even if the weight afforded to the amended scheme had been potentially determinative, the signed and completed unilateral undertaking dated 20 January 2025 was flawed in terms of its effectiveness as it did not provide me with any certainty that the amended scheme would be properly secured and marketed as self-build housing. This could have been sufficient to dismiss the appeal.
 18. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Joanna Gilbert

INSPECTOR