
Costs Decision

Site visit made on 25 February 2025

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2025

Costs application in relation to Appeal Ref: APP/D0515/W/24/3350495 113 Elm Low Road, Wisbech, PE14 0DF

- 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 W Wiles [A and L Construction Services Ltd] for a full award of costs against Fenland District Council.
 - The appeal was against the refusal of the Council to grant planning permission for the development described as 'residential development - construction of a pair of two storey three bedroom semi-detached dwellings.'
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Decision

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

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. It goes on to state that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the procedural handling of the case and the substance of the matter under appeal. The PPG provides examples of unreasonable behaviour which may result in an award of costs against a Council. These include but are not limited to, circumstances where the Council has prevented or delayed development that should clearly be permitted, and vague, generalised or inaccurate assertions about a proposals impact, which are unsupported by any objective analysis. The applicant's cost claim is made on the basis that the Council has failed to provide evidence to substantiate its reasons for refusal.
4. In determining the planning application, the Planning Committee as the decision-maker is not bound to accept the recommendation of its officers. However, it is required to give clear, substantiated reasons for its decision. I acknowledge that the planning application was recommended for refusal by officers and that the Council is not obliged to submit a planning statement. Nonetheless, it is the Council's responsibility to justify its decision.
5. Although the content of the Council's statement is very limited, I have been supplied with the minutes of the committee meeting which demonstrate that the proposal was debated in detail. This was particularly the case in relation to highway safety concerns and the effect on the character and appearance of the area, which

went on to form the first reason for refusal. While I have not agreed with the Council in relation to this particular issue in my decision, I am satisfied that this is a matter of judgement and the Council clearly articulated its concerns. It was not unreasonable in its approach to this matter.

6. However, the second reason for refusal related to the effect of the development on the living conditions of the occupiers of No 111 Elm Low Road, with particular regard to a loss of light. The committee meeting minutes make only vague reference to a concern regarding the overshadowing of the bungalow, without any detailed explanation of why this was considered to be the case. Furthermore, there was no apparent consideration of the extant approval for a single dwelling that would occupy a very similar position and be of a similar height and scale to the proposal. The brevity of the Council's appeal statement does not provide any substantive clarification or explanation as to why the proposal was considered materially worse than the fallback position.
7. Based on the evidence before me, it seems that with regard to the second reason for refusal, the Council relied on vague and generalised assertions which are unsupported by any objective analysis of the appeal proposal, or the previous approval which formed a material consideration.
8. An appeal may not have been avoided in its entirety. However, I find that unreasonable behaviour has occurred from the Council's failure to properly consider and substantiate the effect of the proposal on the living conditions of neighbouring occupiers. The applicant has incurred costs in having to defend this aspect of the appeal.

Conclusion

9. I find that unreasonable behaviour resulting in unnecessary expense as described in the PPG, has been demonstrated. A partial award of costs in respect of the second reason for refusal only, is justified in this instance.

Costs Order

10. 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 Mr W Wiles [A and L Construction Services Ltd], the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the second reason for refusal. Such costs are to be assessed in the Senior Courts Costs Office, if not agreed.
11. 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.

M Clowes

INSPECTOR