



Costs Decision

Hearing held on 4 December 2024

Site visit made on 16 December 2024

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th of March 2025

Costs application in relation to Appeal Ref: APP/C1570/W/24/3344534

Land north of Baynard Avenue, Flitch Green, Essex CM6 3FD

- 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 Baker and Metson Limited for a full award of costs against Uttlesford District Council.
 - The appeal was against the refusal of planning permission for Hybrid Planning Application - Outline Application for up to 72 dwellings (Use Class C3) together with a building for use falling within Class E (a) or (b) or (cii) or (ciii) or (d) or (e) or (f) or (g i) with all matters reserved, except access and structural landscaping. Full application for access and structural landscaping.
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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. The applicant's application for costs is based on the alleged unreasonable behaviour of the Council and wasted expense, for the reasons considered below.
4. On two occasions the applicant's planning application was supported by officers of the local planning authority. On both these occasions the determination of the application was a matter for the Planning Committee.
5. On both occasions Planning Committee went against the recommendation of the Council's professional officers. Planning Committees are not bound by a professional recommendation and are entitled to depart from this based on the facts of the case and planning judgment. However, this is not an unqualified right, as members of a planning committee must be able to properly substantiate any concerns identified.
6. Although the LPAs decision includes four reasons for refusal ('RfR'), following the lodging of the applicant's appeal, the Council reconsidered these reasons at a further meeting of its Planning Committee, at which it was agreed that RfR 2 and 4 would not be defended at appeal.
7. RfR 2 suggests that because the development site incorporates a single access, this would be a poor form of development. RfR 4 relates to the accessibility of the

development site. Although RfR 2 and 4 were not formally withdrawn, it is clear that the LPA decided not to defend these at appeal.

8. To mitigate costs to the applicant in the appeal, the Council notified the applicant before and after seeking ratification from Planning Committee not to defend RfR 2 and 4.
9. Nevertheless, no reasoning has been provided to support the Council's decision to introduce and then not defend RfR 2 and 4. From this the only conclusion I can draw is that RfR 2 and 4 are unsustainable and were as good as withdrawn. The PPG says that examples of unreasonable behaviour which may result in an award of costs include withdrawal of any reason for refusal. Accordingly, I consider that by introducing and effectively withdrawing RfR 2 and 4 without any cogent explanation is an example of unreasonable behaviour on the part of the Council.
10. RfR 1 refers to the effects of the proposal on character and appearance and RfR 3 relates to the effects of the proposal on the setting of a nearby heritage asset.
11. Whilst I have noted that there are matters of common ground between the main parties as set out in the Statement of Common Ground ('SoCG') and highlighted in the applicant's costs submissions, the SoCG also identifies 'Matters not Agreed' between the main parties and these support the Council's case in respect of RfR 1 and 3. These matters were also discussed at the Hearing.
12. The members' consideration of the effects of the proposal on character and appearance and a heritage asset are matters of planning judgement. This involves some subjective analysis having regard to the context of the site, the proposal, the development plan and other material considerations.
13. Similarly, the interpretation of planning policy is a matter of judgement for the decision maker. In my view, because Policy S7 of the Uttlesford Local Plan (2005) seeks to protect the countryside, there is nothing to suggest that the consideration of coalescence or the perception of this in respect of settlements is not a consideration which is outside the broad ambit of this Policy.
14. Based on the Officer Reports to Planning Committee on the planning application, members of Planning Committee would have been aware of the relevant planning issues, development plan policies, the Council's five-year housing land supply position, local housing needs and the benefits of the proposal. The application was also considered and discussed at two separate meetings. Also, as to how much weight is attached to relevant policies of the development plan and whether or not this is outweighed by any benefits and other considerations are matters of judgement for the decision maker, in this case Planning Committee.
15. Moreover, RfR 1 and 3, as set out in the Council's decision notice are complete, specific and relevant to the application. These also refer to relevant development plan policies. The Council's conclusions about the impact of the proposal, as set out in its appeal statement in respect of RfR 1 and 3 are clear and supported by sufficient analysis. The Council and third parties were also able to support these RfR at the Hearing and therefore properly substantiate the concerns identified.
16. In light of the above, I am satisfied that RfR 1 and 3, albeit contrary to officers' professional advice were based on reasonable planning grounds.

17. I am also mindful that since Planning Committee determined the application, the National Planning Policy Framework ('the Framework') has been revised and this has also changed the Council's 5-year housing land supply position. These factors have influenced my decision in the appeal. Consequently, and whilst I have found in favour of the applicant's appeal, I cannot be certain that this would have been the case prior to the revision of the Framework. Therefore, I cannot support the applicant's assertion that the Council prevented or delayed development which should have clearly been permitted.
18. Nevertheless, as already stated, the Council acted unreasonably with regard to RfR 2 and 4. Despite the efforts of the Council to forewarn the applicant about its decision not to defend RfR 2 and 4, and whilst these RfR were not the basis of discussion at the Hearing, the applicant did address these RfR in its Statement of Case to the appeal and would have incurred expense in doing so.
19. Given the above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in respect of RfR 2 and 4 and that a partial award of costs is justified.

Costs Order

20. 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 Uttlesford District Council shall pay to Baker and Metson Limited the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in defending RfR 2 and 4 only.
21. The applicant is now invited to submit to Uttlesford 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

M Aqbal

INSPECTOR