



Costs Decisions

Site visit made on 24 March 2025

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 April 2025

Costs application A in relation to Appeal Ref: APP/P1560/W/24/3349919

Site of 1 & 2 Bridge Cottages, Parkeston Road, Dovercourt, Harwich, CO12 4HE

- 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 G and P Schelvis for a full award of costs against Tendring District Council.
 - The appeal was against the refusal of the Council to grant outline planning permission for two detached houses.
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Costs application B in relation to Appeal Ref: APP/P1560/W/24/3349919

Site of 1 & 2 Bridge Cottages, Parkeston Road, Dovercourt, Harwich, CO12 4HE

- 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 Tendring District Council for a full award of costs against G and P Schelvis.
 - The appeal was against the refusal of the Council to grant outline planning permission for two detached houses.
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Decisions

Application A

1. The application for an award of costs is refused.

Application B

2. The application for an award of costs is refused.

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 where the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Both the unreasonable behaviour and an outline of the unnecessary or wasted expense incurred because of this should be demonstrated in an application for costs.
4. I have considered each costs application on its own merits. However, because the matters are interrelated and to avoid repetition, I have dealt with the applications together.

The case for the appellant

5. The appellants application for costs is on the grounds that:

- the Council determined the application after five and a half years of agreeing to hold it in abeyance (due to the appellants land ownership and registration issues that allegedly prevented them from being able to submit a legal obligation), and eight weeks prior to introducing a new procedure, which would have allowed the outstanding matter awaiting a legal obligation to be dealt with by condition;
 - the Council determined the application after an agreed extension of time had expired without further communication; and
 - the Council failed to defend its reasons for refusal at appeal.
6. It is clear from the evidence before me that the Council repeatedly advised the appellants of their concerns and of what information was required to address those matters. Although the Council had been willing to hold the application in abeyance for a significant period of time, in an attempt to allow the appellants to address the outstanding concerns, it was under no obligation to do so. The Council had provided the appellants with an ownership declaration form that would, subject to completion, have enabled the Council to accept a legal agreement despite the land being unregistered. However, the appellants own Solicitor was unwilling to complete this, and there is nothing before me to suggest that the appellants sought alternative legal advice to enable them to progress this matter in a timely manner.
7. It would be unreasonable to expect the Council to leave the application undetermined indefinitely, given the lengthy and uncertain timescales surrounding the land ownership and land registry issues, and given the appellants failure to provide the necessary information within the extended timescales previously agreed.
8. Whilst a more courteous and professional approach would have been to contact the appellants for an update, and to advise them of the Council's intention to refuse the application if the required information could still not be provided, I do not consider that the Council's failure to do this amounts to unreasonable behaviour. In reaching this decision I am mindful that no agreed extension of time was in place at the time the decision was made, the application had been pending for over five years, the additional information regarding Hazel Dormice had not been submitted and the appellants remained unable or unwilling to provide a completed land ownership declaration form and legal agreement. A further conversation or message pre-warning the appellants of the proposed refusal notice would not have avoided the need for the appeal or the appellants disappointment. Moreover, I note that a separate complaint has been made directly to the Council regarding the lack of communication and an apology has been issued.
9. In relation to the first two grounds I cannot therefore conclude that there was a lack of meaningful engagement by the Council or that it behaved in an unreasonable manner.
10. With regard to the Council not defending its reasons for refusal, this was because the appellants submitted additional information with the appeal to address the first reason, and because procedural changes agreed within the Council after the decision had been issued enabled the second reason for refusal to be dealt with by condition.
11. From the correspondence before me, it appears that the appellants had the information to address the first reason for refusal, which is dated April 2023, long

before the decision was issued in February 2024, but chose not to submit this for consideration, whilst waiting for the ownership issues to be resolved. Clearly the Council could not consider this information until it had been submitted. If this information had been submitted in a timely manner, it is likely that the application would have been refused solely on the second reason for refusal.

12. There is no evidence before me to suggest that the officers responsible for making the recommendation of refusal and signing off that decision would have known, if or when, an amended procedure would be approved by the Council to enable conditions to be used to secure a mechanism for financial mitigation.
13. Both reasons for refusal were therefore reasonable at the time of the decision and it was clear from the Council's appeal submissions why it had reached its decision, and what had changed since that time.
14. I therefore conclude that despite the lack of communication prior to issuing the decision notice, the Council has not behaved unreasonably. Nor have I been provided with any explanation as to what unnecessary and wasted costs were incurred by the appellants because of the Council's behaviour.

The case for the Council

15. The Council's application for costs is on the grounds that the information submitted with the appeal to address its first reason for refusal could have been submitted with a new application, and the second reason for refusal could have been addressed by a condition, following its approved change in procedure. As such, the appeal was not a last resort and could have been avoided.
16. The appellants are entitled to exercise their right of appeal, which of course unlike the submission of a fresh application, and often requests for pre-application advice, does not incur a fee. Given the length of time the application was pending, albeit at the appellants request, and given the lack of communication with the appellant prior to issuing a decision, it is somewhat unsurprising that an appeal was lodged.
17. The submission of additional information does not necessarily mean the appellant agreed that it was necessary, and the appellant had no way of knowing whether or not the Council would have found the additional information acceptable had it been submitted with a fresh application. Moreover, the Council's own costs rebuttal suggests that it may not have considered it reasonable to impose a condition requiring the submission of a legal agreement whilst the land ownership remained unregistered. As the land registry issue has only recently been resolved, it remained uncertain how the necessary financial mitigation required to make the development acceptable could be secured. The appellant could not therefore be certain a fresh application would have been granted by the Council.
18. I therefore conclude that the appellants decision to appeal the refusal rather than to submit a fresh application with the additional information to address the first reason for refusal, does not amount to unreasonable behaviour. Even if the appellants had behaved unreasonably, I have not been provided with any explanation as to what unnecessary and wasted costs were incurred by the Council as a result of this behaviour.

Conclusion

19. I therefore conclude that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated by either party. Consequently, both parties should bear their own costs in respect of the appeal and both applications for costs are refused.

R Bartlett

INSPECTOR