



Costs Decision

Site visit made on 6 May 2025

by **F Harrison BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 June 2025

Costs application in relation to Appeal Ref: APP/J1535/W/24/3353156 69 Hemnall Street, Epping, Essex CM16 4LZ

- 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 and Mrs Andrew and Susan Smith for a partial award of costs against Epping Forest District Council.
 - The appeal was against the refusal of planning permission for a new 2-bedroom private detached cottage with basement.
-

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 is seeking a partial award of costs on procedural grounds and the Council's handling of the application in relation to the fourth reason for refusal on the decision notice. It is alleged that the Council gave conflicting advice about whether a unilateral undertaking (UU) should have been included at the application stage as mitigation for the Epping Forest Special Area for Conservation (protected site). This alleged unreasonable behaviour led to the drafting costs for a UU and associated planning and legal advice at the appeal stage.
4. An extract from the Council's website provided by the applicant, relates to what information should be provided with a planning application and indicates that there should be sufficient information to enable the Council to conclude that the proposal would not result in an adverse effect on a protected site, which may include mitigation measures and how they would be secured and delivered. There is also a standard UU template available to assist applicants.
5. Nevertheless, the Council contend that the advice given by the Council's solicitor suggesting that it is not usual to submit a UU with an application was correct, on the basis that UUs are normally only submitted if the application is to be approved, to prevent unnecessary costs if the proposal is refused. This is a reasonable approach to have taken however it is regrettable that it was not clearly articulated in these terms in the solicitor's correspondence with the applicant.
6. Notwithstanding that the fourth reason for refusal in relation to the protected site may have come as a surprise to the applicant given the Council's solicitors advice,

in having regard to the statutory duty within the Conservation of Habitats and Species Regulations 2017, its inclusion stands up to scrutiny on the planning merits of the case. As such, while the applicant may well have been frustrated with the addition of the fourth reason for refusal, it was not unreasonable for the Council to include it.

7. The Council also had concerns regarding the effect of the proposal on the character and appearance of the area and on living conditions that meant the proposal was unacceptable. Therefore, even if a signed and dated UU had been submitted with the planning application, the Council would have been unlikely to have come to a different overall conclusion on the scheme. In this regard the absence of a UU did not directly impact the Council's decision-making process which brings me to conclude that no unreasonable behaviour occurred.
8. Furthermore, given the other reasons for refusal, the appeal could not have been avoided had the Council acted differently and required the submission of a UU with the application, and it is not clear that the applicant has incurred unnecessary or additional costs because of the Council's approach on this matter. Moreover, the assertion that the costs associated with drafting and submitting a UU are significantly higher at the appeal stage than the application stage is not supported in evidence.

Conclusion

9. For the reasons given above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

F Harrison

INSPECTOR