
Costs Decision

Site visit made on 4 May 2016

by Jason Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 June 2016

Costs application in relation to Appeal Ref: APP/X1925/W/16/3145309 Rose Farm, Codicote Road, Whitwell, Hertfordshire SG4 8AB

- 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 Marcus Powell for a partial award of costs against North Hertfordshire District Council.
 - The appeal was against the refusal of planning permission for six semi-detached houses.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. Unreasonable behaviour in the context of an application for an award of costs may be either procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).
3. The applicant's case essentially relates to three aspects of the Council's handling of the planning application to which this appeal relates. Firstly, that the applicant was not given sight of the consultation response from the Council's Conservation Officer and was unable to enter into any negotiation with the Council in respect of those concerns. Secondly, that one of the Council's reasons for refusal relates to the lack of an ecology assessment, despite one not being requested by Hertfordshire Ecology. Finally, that one of the Council's reasons for refusal related to the lack of a Flood Risk Assessment, despite the lack of objection from the Environment Agency or the Lead Local Flood Authority.
4. Whilst I accept that the lack of communication with the Council and delay in the application would have caused the applicant some concern, I have no evidence to suggest that the Council's decision was based on anything other than the merits of the proposal as submitted by the applicant. Furthermore, it can be seen from the appeal decision that I agree with the Council in respect of the issue of ecology and biodiversity, considering that in the absence of any such ecology survey, the proposal would likely have a harmful effect. Whilst Hertfordshire Ecology did not raise an objection, substantive concerns were raised by Hertfordshire and Middlesex Wildlife Trust. It follows, therefore, that

on both of those grounds, I am satisfied that the Council has not behaved unreasonably.

5. Turning to the issue of the Council's position on the requirement for a Flood Risk Assessment. I have noted the Council's concerns in respect of the proximity of the appeal site to the River Mimram. However, the appeal site lies within Flood Zone 1 and no objections were received from the Environment Agency or the Lead Local Flood Authority. As can be seen from the appeal decision, I agree with the applicant that the Council has not substantiated its reason for refusal in respect of flood risk and has, therefore, behaved unreasonably.
6. However, I must consider whether that unreasonable behaviour has resulted in the applicant incurring unnecessary expense in the appeal process. In this instance, the Council also raised three other grounds for refusal and in those circumstances it seems to me that an appeal would have been made regardless. Moreover, the applicant has not provided a Flood Risk Assessment with the appeal, instead providing only a very brief rebuttal of the Council's refusal on factual grounds rather than the provision of any particular technical evidence. Those comments are made in amongst detailed grounds of appeal made by the appellant on other points relating to the Council's position.
7. As a result, it seems to me that there has been little work involved in responding to the matter of flood risk such that it can be regarded as 'de-minimis'. I cannot agree therefore that the applicant was put to unnecessary or wasted expense.

Conclusions

8. I therefore find that unnecessary or wasted expense resulting from unreasonable behaviour, as described in the Guidance, has not been demonstrated.

Jason Whitfield

INSPECTOR