The Planning Inspectorate

Costs Decision

Site visit made on 24 April 2023

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th May 2023

Costs application in relation to Appeal Ref: APP/A2525/W/22/3309266
47 Low Lane, Holbeach, Spalding PE12 7PW

- 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 Messrs D and A Rulewski for a full award of costs against South Holland District Council.
- The appeal was against the refusal of planning permission for the erection of four detached dwellings, one detached garage and demolition of existing bungalow.

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 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 applicants allege that the Council behaved unreasonably by refusing planning permission contrary to Officer advice without reasonable justification or substantiated evidence, and by introducing new information, including new grounds for refusal, at appeal stage.

4. It must be first noted that the Council was entitled to refuse planning permission contrary to the advice of its Officers, subject to its reasons for doing so being satisfactorily substantiated and supported by objective analysis.

5. A submitted Daylight, Sunlight and Overshadowing Study[1], formulated in accordance with relevant Building Research Establishment (BRE) guidance, concludes no adverse material impact on neighbouring occupiers at The Chestnuts. However, BRE guidance, which is not adopted policy, must be applied and interpreted flexibly in light of individual site and case circumstances.

6. Moreover, at this site, the 'rule of thumb' 45-degree test is not passed by all rear-facing habitable room windows of The Chestnuts, and the orientation of the site dictates that some sunlight would inevitably be obstructed by proposed new development of not insignificant scale and bulk during early morning hours. To my mind, notwithstanding the successful outcome of the planning appeal that is the subject of this application and the lack of any explicit reference to sunlight or daylight in the development plan policies relied upon in

[1] dated 6 October 2021

its reason for refusal, it was not unreasonable for the Council to refuse planning permission on grounds specifically related to loss of daylight and sunlight at The Chestnuts. In coming to this finding, I have noted a relevant part of the Council's Local Validation List and given due regard to the site's recent planning history.

7. However, the Council's Statement of Case is not consistent with its refusal reason in the sense it does not seek to solely focus upon daylight and sunlight effects. Instead, in addition to loss of light, it has been alleged that the westernmost proposed dwelling (Plot 1) would have an overbearing effect and lead to an unacceptable loss of outlook for occupiers of The Chestnuts. Through conflating different amenity-related issues, the Council has significantly expanded its grounds of objection. This constitutes unreasonable behaviour.

8. I accept the point that different Officers shall often have differing professional opinions, but this does not legitimise the introduction of noticeably expanded grounds of opposition when compared to the refusal reason expressed upon its Decision Notice[2]. Moreover, particularly as the original Decision Notice[3] was quashed by order of the High Court in lieu of the Council's acceptance that the reasons relied upon within it did not accurately reflect those put forward by members of its planning committee, it was clearly inappropriate to seek to introduce arguments related to overbearing effects.

9. The Council's Statement of Case contains assessments specifically focussed upon the 'design', 'scale' and 'position' of Plot 1, words that are included in its refusal reason. However, such assessments introduce new lines of argument inconsistent with its reason for refusing planning permission, which is indisputably centred upon the alleged loss of daylight and sunlight to be caused due to the design, scale and position of Plot 1. Active reference within the Council's Statement of Case to relevant development plan policies does not alter my view in this regard.

10. The applicants, at final comments stage, produced lengthy submissions. This is perhaps unsurprising given the unnecessarily expansive and unfocussed nature of the Council's Statement of Case which is littered with references to loss of outlook and overbearing effects. It is clear, to my mind, that the Council's unreasonable behaviour has led to the applicants incurring unnecessary and wasted expense at final comments stage. Indeed, lengthy and far-ranging submissions were necessitated that should not have been. This finding does not apply to Document 2 of the applicants' final comments, which serves to introduce new evidence on a separate basis.

11. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the submission of information that amounted to the introduction of new grounds for refusal at appeal stage, and a partial award in respect of the appellant's costs in refuting these new grounds of refusal (apart from Document 2) is therefore warranted.

[2] dated 25 May 2022
[3] dated 14 March 2022

Costs Order

12. 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 South Holland District Council shall pay to Messrs D and A Rulewski, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing their response to the Council's appeal submissions (not including Document 2 of said response); such costs to be assessed in the Senior Courts Costs Office if not agreed.

    The applicants are now invited to submit to South Holland 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.

Andrew Smith

INSPECTOR