



Costs Decision

Site visit made on 28 March 2023

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2023

Costs application in relation to Appeal Ref: APP/N2535/W/22/3312024 Land to the east of Church Road, Upton, Gainsborough DN21 5NS

- 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 D Churchill for a full award of costs against West Lindsey District Council.
 - The appeal was against the refusal of planning permission for application to erect 5 detached dwellings with attached garages.
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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. Council Officers recommended approval of the planning application and, this was informed by the consultation response of the Highway Authority who raised no objections to the proposal. However, the Council Members were entitled not to accept the professional advice of Officers so long as a case could be made for the contrary view with evidence produced to substantiate the reasons for refusal.
4. Amongst other matters, the Council's evidence in relation to the first reason for refusal references that Church Road is narrow and has limited footpath provision, that Main Street contains bends and on-street parking, whilst the proposed development would generate highway movements. It can be seen from my appeal decision that these are all matters which, to some extent, I agree with. Unlike the Council, however, I have concluded that the effects of the development upon the safety of highway users would be acceptable. Nevertheless, that assessment is one which is a matter of judgement. It was not unreasonable for Council Members to come to a different conclusion. The opposing view that, given the subsisting conditions in the area, the development would result in unacceptable harm is not an unreasonable view and given all evidence before me, this view has been adequately substantiated by the Council.
5. The evidence indicates that, at the time the applicant submitted the planning application the subject of the appeal, the previous planning permission referenced 138896 was no longer extant. There was no prospect of that development coming forward. In such circumstances, that the Council gave

little or no weight to it and reassessed the access arrangements, local highway conditions and loss of agricultural land, whilst taking account of representations to the application, was not unreasonable. In reaching that view on the second reason for refusal, I have taken into account that there have been updates to national policy and the emerging LP relating to agricultural land which necessitated determination of the application on its merits. In that regard, it will be seen from my appeal decision that whilst I find no harmful loss of best and most versatile agricultural land or conflict with the recently adopted LP in that regard, such a conclusion is based on policy interpretation relative to the specific circumstances of the proposal. As such matters relate to matters of judgement, I cannot find that Council Members behaved unreasonably in reaching a different view. It follows that I consider that the Council substantiated the second reason for refusal, irrespective of my contrary findings.

6. In their decision, the Council did make some erroneous policy references to what, at that time, was the emerging LP. Those policies related to trees, woodlands and hedgerows and to safeguarded land for infrastructure and were unrelated to the substance of the refusal reasons. The emerging plan referenced has since been adopted. I accept that given the Council's decision contained these erroneous references and, regardless of the reasons as to why little or no communication on the matter ensued prior to the appeal being submitted, the appellant was compelled to address these policies in their appeal submissions. However, the Council's decision also identified other policies within the development plan in force at that time which were correctly referenced and, it was also clear that the refusal reasons related to highway safety and agricultural land. Furthermore, I am satisfied that the applicant rebutted the erroneous policies identified by the Council quickly and easily without any significant wasted expenditure.
7. It follows that, although the Council's errors did result in the appellant unnecessarily having to address the erroneous policies, if this had not occurred, the substance of the planning matters in dispute remained the same, the appeal could not have been avoided, nor would the pertinent issues have been narrowed.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. I therefore determine that the costs application should fail and no award is made.

H Jones

INSPECTOR