

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Development and Conservation Control
Committee

7th July 2004

AUTHOR/S: Development Services Director

Department of The Environment Circular 8/93, Award of Costs in Planning and Other (Including Compulsory Purchase Order) Proceedings

Purpose

1. To appraise and to remind the Committee of the contents of Circular 8/93 published on 29th March 1993.

Background

2. My report to Planning Committee on 9th June 1993 summarised the key points of this Circular. This is attached as Appendix 1 for the benefit and guidance of the new Committee.
3. There have been no changes in the powers to award costs (see para 2.3 – 2.5 of the appendix). The Circular remains extant.
4. The principal reason for reporting this Circular to Committee on a regular basis is to remind Members that each reason for refusal must be substantiated by evidence at appeal. Costs may be awarded against the Authority if a reason for refusal is not properly supported.

Considerations

5. Since my report of 4th June 2003 the following applications for costs have been determined by the Planning Inspectorate:
 - A. Application by an appellant against the Council in respect of unreasonable behaviour not agreeing to an adjournment to a later appeal hearing to enable all planning issues in respect of the issue of enforcement notices against engineering works and use of land as a residential caravan site at Cottenham.

The Inspector did not agree with the appellant.

He stated:

“The Council was concerned about the timing of the appeals, applications and unauthorised developments, and in my opinion its desire to avoid unnecessary delays accords with national guidance.”

The enforcement appeals were dismissed although the appeals were solely concerned with the period for compliance.

- B. Application by an appellant against the Council in respect of unreasonable behaviour in refusing planning permission for a dwelling in West Moor Avenue, Sawston and in not providing sufficient evidence to justify its decision, causing avoidable financial loss to the appellants.

The Inspector did not agree with the appellant.

He stated:

“The Council’s objections to the development remain ones of principle based on the specific circumstances of the site and its relationships to neighbouring dwellings and the adverse impacts that it alleges would arise. To that extent I make no criticism of the Council in maintaining its consistent objection to the development of this land in subsequent discussions, and it is clear that the matter would need to be resolved through the appeal procedure. While I acknowledge that a more welcoming stance could have been taken, particularly given the decisions to allow bungalows on sites nearby, I do consider that, in themselves, those decisions form compelling precedents for this scheme. The physical characteristics of the site are clearly different and those schemes did not raise exactly the same issues as those in this appeal. In any event, applications and appeals have to be determined on their individual merits.

In the main the Council presented appropriate evidence to support its reasons for refusal with the exception of its contention that the scheme would result in overshadowing of adjoining land. On this point no technical material at all was advanced to justify the allegation and I consider that the Council’s behaviour in this regard to have been unreasonable. However, the appellants similarly relied upon subjective assessment and did not present detailed rebuttal evidence on the point and thus had not incurred unnecessary expense in this respect. On the matter of the level and siting of parking spaces to serve the proposed and existing developments, no evidence is before me that the Council had sought to impose a standard that is greater than that advocated in national and local policy.

Paragraph 8 to Annex 3 of the Circular advises that where planning issues are clearly shown to be finely balanced, an award of costs relating to substantive, as distinct from procedural, matters is unlikely to be made against the planning authority. While I have concluded that the appeal should be allowed, nevertheless I consider that the assessment of the character and appearance issue together with the amenity impact to be finely balanced. Accordingly, and taken as a whole and in the light of the national advice, I consider that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has not been demonstrated.”

The Planning Appeal was allowed and planning permission granted.

Summary

6. To minimise the risk of suffering an award of costs, the following factors should be borne in mind:
- a) Reasons for refusal must be capable of being defended at appeal;
 - b) Relevant evidence must be submitted at appeal to substantiate each reason for refusal;
 - c) Seek independent advice or evidence in advance of refusing an application if the comments of a statutory consultee are not to be followed;
 - d) Relevant information should be sought at the application stage rather than relying upon its absence as a reason for refusal;

- e) The Authority should be willing to negotiate if an objection is capable of being resolved;
- f) A modified scheme should not be refused where an earlier appeal decision indicated it would be acceptable, and circumstances have not materially changed; and
- g) Conditions should not be imposed which are unnecessary, unreasonable, unenforceable, imprecise or irrelevant.

7. Unreasonable behaviour: A summary of the criteria is attached at Appendix 2.

Background Papers: the following background papers were used in the preparation of this report:

Department of the Environment Circular 8/93

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