
Costs Decision

Site visit made on 13 September 2016

by J C Clarke BSc(Hons) BTP MRTPI

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

Decision date: 2 December 2016

Costs application in relation to Appeal Ref: APP/Y2003/W/16/3150393 Land off Burnside, Broughton DN20 0HT

- 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 European Property Acquisition Ltd for a full award of costs against North Lincolnshire Council.
 - The appeal was against the refusal of planning permission for Residential development and associated works.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The national Planning Practice Guidance (PPG) advises that, where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
3. The PPG advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. It makes clear that a local planning authority is required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour¹. Examples of substantive unreasonable behaviour referred to in the PPG include *failure to produce evidence to substantiate each reason for refusal on appeal*.
4. Paragraph 32 of the National Planning Policy Framework (the 'Framework') advises that development proposals should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
5. Whilst additional traffic would be generated by the development along Burnside the Council has not, in the context of the Framework, produced any evidence which demonstrates that the residual cumulative impacts of the development would be severe. In particular the Council has failed to produce any technical evidence, for example concerning existing or potential traffic levels in the area, the design of Burnside, visibility at the junction of Burnside and Brooklands Avenue or any other matter, to substantiate its concerns in respect of highway safety.

¹ Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306

6. The Council has also failed to produce evidence to substantiate its concerns that the proposal would cause material harm to the living conditions of occupiers of nearby dwellings.
7. Due to its failure to produce any objective evidence to substantiate its reason for refusal the Council has also failed to demonstrate that there is any likelihood of material conflict with related provisions of the development plan and the Framework.
8. Although I have dismissed the appeal, this is for a reason (the lack of a legally binding obligation covering affordable housing) which is unrelated to the Council's reason for refusal and this factor does not outweigh my finding that the Council acted unreasonably in refusing permission.
9. I acknowledge that the Council's Planning Committee considered the advice of its officers before making its decision, that decision making procedures were followed and the Committee is not obliged to follow the advice of its officers. However, the Council is still obliged to substantiate its reasons for refusal.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

11. 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 North Lincolnshire Council shall pay to European Property Acquisition Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to North Lincolnshire 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.

Jonathan Clarke

INSPECTOR