

Costs Decision

Site visit made on 1 November 2016

by Elaine Worthington BA (Hons) MTP MUED MRTPI

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

Decision date: 15th December 2016

**Costs application in relation to Appeal Ref: APP/V2723/W/16/3153361
Land east of King William IV Public House, Barton, Richmondshire,
DL10 6LT**

- 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 Mandale Homes North Ltd for a partial award of costs against Richmondshire District Council.
 - The appeal was against the refusal of planning permission for a residential development of 10 dwellings.
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Decision

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

Reasons

2. Planning Practice Guidance (the Guidance) 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 Guidance states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example by unreasonably refusing planning applications. Examples of these include preventing or delaying development which should clearly be permitted, having regard to the development plan, national policy and any other material considerations. Another is a failure to produce evidence to substantiate each reason for refusal on appeal including vague, generalised assertions about a proposal's impact which are unsupported by objective analysis.
 4. The appellant considers the second reason for refusal concerning noise to be unreasonable and seeks a partial award of costs in this regard.
 5. I appreciate that the appellant submitted a Noise Assessment, responded to queries from the Council's Environmental Health Officer (EHO) and proposed mitigation measures through the course of the planning application. I also note that the Council's committee report confirms at paragraph 7.26 that Environmental Health have confirmed that they concur with the conclusions of the Noise Assessment that satisfactory internal and external noise levels are achievable subject to the mitigation measures recommended.
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6. I have some sympathy with the appellant's argument that this statement appears to run contrary to the EHO's continued objections to the scheme particularly regarding the potential for sleep disturbance in relation to the future occupiers of the houses nearest to Rose Villa Farm. This inconsistency has not been explained by the Council.
7. However, despite this initial general statement, it is clear from the correspondence between the parties that the appellant was aware of the EHO's continued specific concerns right up to the determination of the application. For the reasons set out in my appeal Decision, I share the EHO's concerns, including those that the quantitative averaged noise statistics provided may not reflect the actual disturbance caused by activities at the farm. On this basis, I have found that the proposal would fail to provide adequate living conditions for the future occupants of the houses proposed closest to Rose Villa Farm in terms of noise and disturbance.
8. This being so, I am not convinced that the EHO continued to request information that had already been provided. Rather it seems to me that whilst some of her concerns were addressed via clarifications received from the appellant's noise consultant, other key questions raised, including concerns as to the methods used in the Noise Assessment to collect, analyse and extrapolate data, were not adequately dealt with.
9. Consequently I am satisfied that the Council has produced evidence to substantiate this reason for refusal and has explained the specific elements of the scheme's impact which are of concern. As such, it has not made vague or generalised assertions which are unsupported by objective analysis. Nor do I consider that the second reason for refusal was included to bolster the Council's case.
10. Furthermore, given that there is another reason for refusal relating to odour (on which I have also found in the Council's favour), I am not persuaded that the Council has prevented or delaying development which should clearly have been permitted, having regard to the development plan, national policy and any other material considerations.
11. I therefore conclude that the Council's behaviour has not been unreasonable and the appellant's costs in defending the appeal in relation to issues of noise were not unnecessarily incurred. For the reasons given above, the application for a partial award of costs is thus refused.

Elaine Worthington

INSPECTOR