
Costs Decision

Site visit made on 5 January 2017

by Helen Heward BSc (Hons) MRTPI

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

Decision date: 8 February 2017

Costs application in relation to Appeal Ref: APP/Z4718/W/16/3159792 Hi Pylon Works, Slades Road, Golcar, Huddersfield HD7 4JS

- 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 David Fisher for a full award of costs against Kirklees Metropolitan Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for the erection of 14 dwellings.
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Decision

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

Reasons

2. The application and response are made in writing and therefore it is not necessary to cite the cases in detail here.
3. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby directly causing the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behavior in the context of an application for an award of costs may be either procedural relating to the process; or substantive relating to the issues arising from the merits of the appeal¹.
4. In summary the appellant's application is made on substantive grounds and is an application for the appellant's full costs in making the appeal. They submit that the Council misinterpreted national planning policy on Green Belt and local policy on space about buildings.
5. In relation to Green Belt the appellant submits that the Council relied solely on visual impact and that is was an irrelevant to a consideration of openness. In my planning decision I set out how the Court of Appeal in *Turner v SSCLG & East Dorset Council*² recognised that the question of visual impact is implicitly part of the concept of openness of the Green Belt and the visual dimension of the Green Belt is an important part of the point of designating land as Green Belt. The Court of Appeal found that, with regard to the *Timmins & Anor v Gedling Borough Council* judgement, the judge had gone too far in stating that there is a clear conceptual distinction between openness and visual impact and stating that it was wrong in principle to arrive at a specific conclusion as to the openness by reference to visual impact. The absence of visual intrusion does

¹ Paragraph: 030 and 031 Reference ID: 16-030-20140306 & 16-031-20140306

² John Turner v SSCLG and East Dorset Council [2016] EWCA Civ 466

not in itself mean that there is no impact on the openness of the Green Belt as a result. But this does not mean that the openness of the Green Belt has no visual dimension (paragraph 25).

6. In the light of this I found the Council's case in respect of visual impact to be reasonable and also found it to be reasonably set out. I too concluded that there would be harm to openness as a consequence of visual impacts.
7. Moreover the appellant's ground of appeal and design and access statement were predicated upon the previous commercial buildings and made no mention of the fact that some had been cleared from the site. I found that in relation to size as expressed as volume and area, the development would have a greater impact upon openness than the buildings in existence which I observed on my visit.
8. I am not persuaded that the appellant has presented evidence to demonstrate that Council behaved unreasonably in relation to this matter.
9. Turning to living conditions. The Council acknowledged that the development met the standards set out in Policy BE12 of the Kirklees Unitary Development Plan in relation to space around buildings. The Council points out that the Policy includes the word 'normally'.
10. Just as one would expect a policy to be capable of flexibility in respect of leniency I find no fundamental reason why a Council should not be able to arrive at a conclusion that a development is not acceptable despite the space standards provided that there reasons are adequately articulated, after all the policy writer cannot imagine all possibly scenarios that might arise.
11. Even though I did not agree that the impacts would significantly harm the living conditions of the future occupiers, I nonetheless found the argument to be reasonably made.
12. I am not persuaded that the appellant has presented evidence to demonstrate that Council behaved unreasonably in relation to this matter either.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and the application for costs is refused.

Helen Heward

INSPECTOR