

Costs Decision

Site visit made on 23 January 2017

by Joanna Reid BA(Hons) BArch(Hons) RIBA

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

Decision date: 14 February 2017

Costs application in relation to Appeal Ref: APP/P1425/W/16/3158328 26 Western Road, Newick, East Sussex BN8 4LF

- 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 Marlow Land Company for a partial award of costs against Lewes District Council.
 - The appeal was against the refusal of planning permission for erection of a 5 bedroom detached house and new vehicular access and double garage for retained house.
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Decision

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

Reasons

2. The 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 application was made in a timely manner.
4. The appellant submitted its noise assessment in April 2016 during the application process. The Council's decision notice is dated 18 May 2016. Reason for refusal 1 says that the proposed development would cause an unacceptable degree of, amongst other things, 'noise disturbance' to occupiers of 4 nearby dwellings and the proposed dwelling.
5. As noise was at issue, and as it appeared that the application stage noise assessment had not been sufficient, the appellant's Environmental Noise Assessment dated 17 August 2016 (the second report) was commissioned solely to deal with the matter at appeal. This second report was submitted with the grounds of appeal when the appeal was made in September 2016. Its findings are discussed in the appellant's full statement of case and in its summary of grounds of appeal. A reasonable reading of either the appellant's statement or its summary would have made clear that the second report existed and was relevant.
6. Despite its concern regarding noise in reason for refusal 1, the Council's appeal statement says that there should be little potential for noise nuisance. The appellant took this to mean that the Council did not seek to defend the part of the reason for refusal regarding noise disturbance. However, the Council did not confirm this in terms in its representations.

7. The Council says that there was insufficient time during the application process to obtain the comments of its consultee. However, it did not seek an extension of time to enable this to happen, and there is little to suggest that the appellant would not have acceded to such a request, as it had already done so on other matters. In the event, the Council's consultee raised no objection on noise grounds. Whilst the Council included the comment of its consultee in its statement, there is very little other than concerns raised by interested parties to substantiate the Council's case regarding noise disturbance.
8. The Council says that it was adopting the precautionary principle regarding noise disturbance. However, reasons for refusal should be complete, precise, specific and relevant to the application. To include a matter in its reasons for refusal that was not supported by substantive evidence at appeal was unreasonable behaviour. This unreasonable behaviour put the appellant to unnecessary and wasted expense in commissioning and producing evidence including a noise survey and addressing noise disturbance at appeal.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs in relation to the commissioning and production of the second report and in addressing noise disturbance in the appellant's statement and summary only is justified.

Costs Order

10. 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 Lewes District Council shall pay to Marlow Land Company the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the commissioning and production of the appellant's Environmental Noise Assessment dated 17 August 2016 and in addressing noise disturbance in the appellant's statement and summary only; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Lewes District 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.

Joanna Reid

INSPECTOR