
Costs Decision

Site visit made on 31 January 2017

by Caroline Jones BA (Hons) DipTP MTP MRTPI

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

Decision date: 16th February 2017

Costs application in relation to Appeal Ref: APP/M0933/W/16/3161609 Tenement Tarn, Burneside, Kendal Cumbria LA8 9AG

- 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 Tommy Brady for a full award of costs against South Lakeland District Council.
 - The appeal was against the refusal of an application for planning permission for the stationing of 3 camping pods.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
 3. The application for costs essentially relies on the behaviour by the Council in processing and determining the application. This includes that the Council's reason for refusal was based on vague and generalised assertions of the proposal's impact on residential amenity and highway safety, that Council Officers failed to engage with the applicant during the process of the application and that the Council did not take account of previous decisions at the site with regard to the impact on the landscape.
 4. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
 5. The Council's concerns in relation to the impact on residential amenity and highway safety were based on potential conflicts if the pods were used for overnight camping. However, the Council did not submit an appeal statement. I do not consider that the Council has clearly demonstrated why the proposal is unacceptable nor has it provided clear evidence to substantiate that reasoning. With regard to residential amenity, it is clear from my decision that the Council's concerns in relation to this matter were unfounded. The tarn can currently be used by those fishing overnight and there are no current restrictions on bringing other family members or the use of barbeques. In
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terms of highway safety, no evidence has been submitted to demonstrate, even if the proposal did lead to an increase in the use of the access or local highway network, how this would have a detrimental impact on highway safety. I consider that the reason for refusal, in relation to both of these matters were not substantiated at appeal and were based on vague and generalised assertions regarding the proposals impact.

6. I therefore find that unreasonable behaviour, resulting in unnecessary expense in defending the elements of the refusal reason relating to highway safety and residential amenity at appeal, has been demonstrated and that a partial award of costs with respect to this matter is justified.
7. The applicant considers that, had they been given the opportunity to do so, photomontages could have been provided which they believe could have been a precursor to further dialogue with the potential of making the development acceptable.
8. The Council contends that it assessed the application on the basis of the information before it and the decision reached was consistent with council policy. The Council considered that further engagement would add little to the assessment. Whilst I can appreciate the applicant's frustrations at not being given the opportunity to submit further information, I can see nothing unreasonable in this behaviour, particularly when the applicant was aware that photomontages had been submitted with previous applications at the site and therefore could have been provided at the outset. Furthermore, whilst planning authorities should work proactively to look for solutions, there is no law or legislation that requires Councils to request or accept additional information during the 8 week period. The Council's view was that additional information would add little to the assessment. Whilst there is scope to agree an extension to the timetable of an application, if the Council considers further discussions would not resolve concerns it is perfectly entitled to refuse planning permission. I do not consider the Council's approach to be unreasonable in this regard.
9. I acknowledge that two previous permissions have been granted at the appeal site, including one which was allowed on appeal, where landscape and visual impact were considered to be acceptable. However, the schemes were for staff accommodation and a summerhouse located in a different part of the site to the current proposals. Each application must be assessed on its own merits and the Council was not bound by those decisions. Therefore, despite my findings on this matter, I do not find that the Council acted unreasonably in refusing the application on landscape grounds.
10. Nonetheless, for the reasons given above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial 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 South Lakeland Council shall pay to Mr Tommy Brady, the costs of the appeal proceedings described in the heading of this decision, limited to those costs

incurred in contesting the reason for refusal in relation to residential amenity and highway safety.

12. The applicant is now invited to submit to the 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Office is enclosed.

Caroline Jones

INSPECTOR