

Costs Decision

Site visit made on 21 April 2016

by M Seaton BSc (Hons) DipTP MRTPI

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

Decision date: 16 February 2017

**Costs application in relation to Appeal Ref: APP/W4515/W/15/3141266
Coleman NE Ltd. Walker Place, North Shields, North Tyneside, NE30 1JD**

- 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 P North Developments Ltd. for a full award of costs against North Tyneside Council.
 - The appeal was against a refusal of planning permission for 27 Apartments along with associated vehicle parking and landscaping.
-

Decision

1. The application is dismissed.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Whilst the Guidance sets out a series of examples of behaviour whereby either a procedural or substantive award of costs may be justified, neither list is stated to be exhaustive. The application for costs is timely.
 3. The applicant contends that the Council has acted unreasonably by virtue of the failure to consult a statutory consultee (Historic England) within an appropriate timescale, leading to a clear delay in providing relevant information; that vague, generalised and inaccurate assertions about the proposal's impact unsupported by objective analysis were made, with a failure to address the comments of the Tyne & Wear Historic Buildings Officer in support of the scheme; and the failure to provide evidence to support the reason for refusal on appeal, in respect of the impact of the scheme on the North Shields Fish Quay Conservation Area.
 4. The Council has conceded that the late consultation of Historic England was an administrative oversight, which was realised upon determining the approach to take on the planning application during the interim period between the submission of the appeal against non-determination, and the receipt of a start date from the Planning Inspectorate. As a statutory consultee, such an oversight is clearly unfortunate where historic building and heritage matters were to the fore. Nevertheless, I am mindful that even in the absence of the response from the late consultation, the Council had formulated a clear view that the proposals were unacceptable on the basis of the impact on heritage assets, and ultimately the Historic England response merely confirmed this position rather than being fundamental in reaching the conclusion.
-

5. I have had regard to the chronology of events and am mindful that the applicant lodged the appeal against non-determination prior to the consultation with Historic England being initiated. However, by appealing in this manner, the normal procedural course of processing the planning application was interrupted. In this respect, the Council were for all intents and purposes therefore no longer processing the planning application, but were preparing their case for the appeal.
6. I do not dispute that the receipt of the consultation response on 11 February 2016 was used as part of the basis to inform the Council's position and recommendation to the Planning Committee on 16 February 2016, in order to determine what the Council's decision would have been if they had been allowed to determine the planning application. However, whilst I accept that there is no evidence that the applicant was either notified of the late consultation of Historic England or of the receipt of any subsequent response until after the Planning Committee, I do not consider that the Council would have been obliged to do so as they were essentially no longer dealing with the proposals in the manner of a planning application. I am satisfied that the applicant had the opportunity to formally respond to the Historic England submissions at the appropriate time during the course of the appeal, and clearly chose to do so as evidenced in their submissions. Whilst I would accept that the failure to consult Historic England in a timely fashion was unfortunate, I do not consider that this was instrumental in the Council reaching their conclusions.
7. I note the applicant has expressed concerns regarding the language used in the Council's contact with Historic England when seeking to initiate the formal consultation. However, whilst I would accept that the Council set out their position in relatively negative terms, I do not consider that this would have had the contended negative impact on the views of professional officers at Historic England, who would undoubtedly have reached their own professional conclusions on the impacts of the proposed development.
8. I have carefully considered the applicant's contention regarding the nature of the Council's evidence as submitted, and that vague, generalised and inaccurate assertions were relied upon unsupported by objective analysis. I accept that the Council's appeal statement was relatively concise, but it is evident from the references within the statement that it must be read in conjunction with the Planning Committee Report, which for the reasons set out above, forms a key constituent part of the Council's appeal case. In this respect, the Council has clearly set out the basis for its conclusions on the impacts of the proposed development on the heritage assets, and whilst I have ultimately disagreed with those conclusions in my decision on the appeal, I am satisfied that the Council has adequately sought to substantiate its case.
9. The applicant has referred me to the comments of the Tyne and Wear Historic Buildings Officer, who had confirmed his support for the scheme, and whose comments it is contended were not considered in the reasoning for recommending refusal of the appeal scheme. The Council has indicated that in reaching its conclusions, that it came to a balanced view taking into account all consultation responses, including those of the Historic Buildings Officer. I note that these consultation comments were included in the summary of responses attached to the Committee Report, but also that the report did not seek to provide a point by point rebuttal of the consultation response. Nevertheless, I

accept that it is within the Council's gift to reach a conclusion having regard to the full balance of consultation responses received, and on the basis of the breadth of coverage of the issues related to the heritage assets, I have no reason to dispute that this was not the case in this instance. Furthermore, I note that the members of the committee had the comments of the Historic Buildings Officer before them, and on the basis of those comments could have reached a different conclusion had they been minded to do so.

10. In these respects, and despite my allowing of the appeal decision, I have not found the Council to have behaved unreasonably on either procedural or substantive grounds, with the result that the applicant has been forced to engage in unnecessary or wasted expense. I therefore find that unreasonable behaviour, as described in the Planning Practice Guidance, has not been demonstrated.

M Seaton

INSPECTOR