
Costs Decision

Site visit made on 24 January 2017

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 17 February 2017

Costs application in relation to Appeal Ref: APP/X1355/W/16/3161909 land at 'Caddetou', Ebchester Hill, Ebchester, Durham DH8 0QE

- 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 Peter Brown for a full award of costs against Durham County Council.
 - The appeal was against the refusal of planning permission for the erection of 1no dwelling plus new access road involving removal of small section of stone wall.
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Decision

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

Reasons

2. Planning Practice Guidance (Guidance) 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 appellant's application for costs relies to a substantial extent on the matter of whether the pre-application advice given by the Council was correct, and whether the application was determined in a manner consistent with that advice. It is argued that, on the basis of the pre-application advice provided, the Council acted unreasonably in refusing to grant planning permission for the proposal and that this has led to an unnecessary appeal. The appellant considers that, had the Council raised concerns about access, or any other matter, at the pre-application stage then the application for planning permission would not have been submitted.
 4. I agree that the tone of the Council's pre-application response is generally positive. It also seems to me that with regard to the option of a proposed new access, the response is also quite clear in stating under what circumstances an acceptable new access could be created.
 5. However, in rebutting the application for an award of costs, the Council state that the pre-application enquiry was treated as a request for outline advice due, in part, to the absence of detailed drawings at that time. It is also quite clear to me that the response was intended to be the starting point for an iterative process and for dialogue between the appellant and the Council, not least because that is how the initial pre-application request appears to have been phrased, but also because the Council's response set out a clear invitation to discuss the appellant's response to the pre-application advice prior to the
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- submission of a formal planning application. From the evidence before me, it seems that the appellant did not avail himself of this opportunity for further, detailed, discussion.
6. Informal advice given before an application is made is given without prejudice and cannot pre-determine the outcome of a subsequent application, which must take account of all material factors, including plans and supporting documentation subsequently submitted. The expense stated to have been incurred through the commissioning of further technical reports to support the planning application, and to address the detailed concerns of consultees, could also have been avoided, or at least an informed decision taken prior to their commissioning, had the Council's invitation to discuss the pre-application response further been taken up.
 7. Whilst I have sympathy with the situation that the appellant now finds himself in regarding 'Caddetou', that appears to be a matter of the appellant's own making, not the Council's. I am satisfied that the Council have adequately and satisfactorily substantiated their reason for refusal at appeal, and that the pre-application advice was not misleading as to amount to unreasonable behaviour.
 8. Thus, for the reasons set out above, I conclude that unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award of costs is therefore not justified.

Graeme Robbie

INSPECTOR