
Costs Decision

Site visit made on 13 February 2017

by C L Humphrey BA (Hons) DipTP MRTPI

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

Decision date: 1st March 2017

**Costs application in relation to Appeal Ref: APP/P2935/W/16/3162474
Felton and Thirston Youth Club, Recreation Lane, Felton, Northumberland
NE65 9QA, Grid Ref Easting: 418587, Grid Ref Northing: 600565**

- 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 Tantalion Estates Ltd for a full award of costs against Northumberland County Council.
 - The appeal was against the refusal of planning permission for change of use from D2 to C3; erection of a building comprising 4 no. apartments.
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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 (the PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and has thereby caused the party applying for costs to incur unnecessary expense in the appeal process. Paragraph 49 of the PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal.
 3. Examples of this include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations and making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
 4. In relation to highway issues and the first reason for refusal, the Council's report to Planning Committee states that following consultation, the highway authority had raised no objection to the development, subject to conditions requiring details of external lighting, cycle storage and boundary treatments and the implementation of the parking area. The highway issues section of the committee report also concludes that, providing these conditions are attached to any grant of permission, the development would be considered acceptable in terms of its impact on highway safety and parking provision, in accordance with Policy TT5 of the Alnwick Local Plan.
 5. The Planning Committee minutes further record that, in response to Members' questions, officers advised that the shortcomings had been recognised but there was already an existing use and there were permitted changes to other
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uses which could result in vehicular traffic exceeding that of residential purposes. Therefore it was not felt that refusal would be sustainable. The minutes go on to document that, after further discussion around the issue of highway safety, the Head of Planning Services reiterated that highway safety would be difficult to sustain as a reason for refusal.

6. The Council did not submit any highway evidence in support of the first reason for refusal and there is nothing of any substance in the Committee minutes to counter the professional views of the highway authority. The concerns of the Planning Committee are generalised assertions unsupported by any objective analysis, and the Council did not produce evidence to substantiate this reason for refusal on appeal. I therefore consider that the Council behaved unreasonably in relation to the first reason for refusal and the applicant has been put to unnecessary expense in having to challenge this issue at appeal.
7. In relation to the second and third reasons for refusal and the effect of the proposed development upon the character and appearance of the area, including the Felton Conservation Area, the case set out in the Planning Committee minutes was clear. The reasons for refusal are complete, precise and relevant to the proposal and they clearly set out which development plan policies the proposed development would conflict with. Members do not have to accept the advice of their officers, and my appeal Decision makes it clear that I agree with the Council's conclusions in relation to this issue. The correspondence between the Council and the applicant following the Committee site visit seeks clarification on matters relating to trees and signs, and does not in itself indicate the Council's acceptance of the proposed development. I therefore do not find that the Council behaved unreasonably with respect to the substance of the matter under appeal in relation to character and appearance.

Conclusion

8. For the reasons set out above I find that unreasonable behaviour by the Council resulting in unnecessary and wasted expense as described in the PPG has been demonstrated in relation to the first reason for refusal only. As such a partial award of costs is justified.

Costs Order

9. 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 Northumberland County Council shall pay to Tantalion Estates Ltd the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's first reason for refusal in respect of highway safety only; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Northumberland County 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.

C L Humphrey

INSPECTOR