
Costs Decision

Site visit made on 20 February 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 7 March 2017

Costs application in relation to Appeal Ref: APP/E2340/D/16/3161354 Croft Barn, Barley New Road, Barley BB12 9LF

- 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 & Mrs Barry Sanderson for a full award of costs against Pendle Borough Council.
 - The appeal was against the refusal of planning permission for removal of three trees and formation of two car parking spaces.
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Decision

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

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes substantive matters including 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. Other substantive matters include failure to produce evidence to substantiate a reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The application for costs relates to the substantive matters listed as examples above, with particular regard to a subsequent planning permission (ref: 16/0697/HHO) granted by the Council for an alternative scheme which the applicants consider would have a greater impact upon the character of the Whitehough Conservation Area.
5. The reason for refusal set out in the decision notice is complete, precise, specific and relevant to the application. The reason for refusal clearly identifies what the Council considers to be harmful and refers to conflict with the policies of the Local Plan for Pendle Core Strategy 2011-2030 (CS) and the National Planning Policy Framework. The appeal relates to householder development which is determined under the Part 1 process set out in the Procedural Guide¹ and the Council's decision was made by Barrowford and Western Parishes

¹ Procedural Guide – Planning appeals – England – 5 August 2016

Committee which overturned the officer recommendation. Consequently, the Council's evidence in seeking to substantiate the reason for refusal are both the officer report to the Barrowford and Western Parishes Committee and the Barrowford and Western Parishes Committee minutes dated 6 October 2016.

6. It will be seen from my appeal decision, that I concluded that the proposed development would fail to preserve or enhance the character and appearance of Whitehough Conservation Area. In reaching that view, I took account of the fallback position afforded by the subsequent planning permission granted by the Council for an alternative scheme, which I consider would be less harmful than the appeal proposal. Consequently, it reasonably follows that the Council did not behave unreasonably in refusing planning permission and the expense incurred in pursuing the appeal or a subsequent application cannot be considered to be a wasted or unnecessary expense.
7. The applicants have raised concerns that Council procedures were not followed as referral was not made to a Management Committee that scrutinises Area Committee decisions when officer recommendations are overturned. However, I cannot conclude that the Council have behaved unreasonably in that regard as the full details of the Council's scheme of delegation and committee procedures are not before me.
8. In any case, the applicants were in a position to decide based on the Council's decision notice and the Barrowford and Western Parishes Committee minutes if they should pursue the appeal and must have thought they had a reasonable prospect of an appeal being allowed and planning permission being granted. From that stage, irrespective of whether the Council's procedures were followed, the costs of the applicants were a matter of choice and those that should normally be expected when lodging an appeal and pursuing it to the end. They do not, therefore, fall within the definition of an unnecessary or wasted expense. Essentially, if an appeal is lodged and pursued to the end, with the Council's arguments prevailing, the costs to the applicants of an appeal cannot be considered an unnecessary or wasted expense.
9. Additional concerns were also expressed relating to an absence of engagement by the Council with the applicants before making the decision. However, based on the evidence before me it is apparent that the Council's reason for refusal related to matters whereby the imposition of conditions would not have overcome the identified conflict with Policies ENV1 and ENV2 of the CS and the Framework. Furthermore, the amendments to the scheme subsequently granted planning permission were considerable. In such circumstances, the Council's approach was not unreasonable.
10. Taking all of the above into account, I cannot conclude that it has been demonstrated that the Council behaved unreasonably or caused unnecessary or wasted expense for the applicants in the appeal process as a result.

Conclusion

11. For the reasons given above, I determine that the costs application should fail and no award is made.

Gareth Wildgoose

INSPECTOR