

Costs Decision

Site visit made on 20 February 2017

by Zoe Raygen Dip URP MRTPI

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

Decision date: 28 March 2017

Costs application in relation to Appeal Ref: APP/G2435/W/16/3162843 Land south of The Green, Donington Le Heath, Leicestershire.

- 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 Wrenbury Properties Ltd for a full award of costs against North West Leicestershire District Council.
 - The appeal was against the refusal of planning permission for outline proposal for a development of up to 34 dwellings.
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Decision

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

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 who has behaved unreasonably and thereby caused the party applying for the costs to incur unnecessary or wasted expense in the appeal process.
 3. The PPG makes it clear that a Council is at risk of an award of costs if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Furthermore the Council is at further risk 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 an objective analysis.
 4. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
 5. The planning application was accompanied by a transport statement and during the process of the application swept path analysis was submitted following a request from the Highway Authority. As a result the Highway Authority concluded that in its view the residual cumulative impacts of the development could be mitigated and would not be considered to be severe in accordance with Paragraph 32 of the Framework.
 6. Little evidence was put forward by the Council to support the reason for refusal and refute the evidence supplied by the applicant. I acknowledge that the Council refers to data from the applicants transport assessment in support of
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its assertion of a speeding problem along the road. However, I found in my decision that this was not substantiated. Furthermore the Council relied on local knowledge following a site visit by the Planning Committee. As a result the alleged harm to highway safety has not been demonstrated other than a vague assertion that parked cars would restrict visibility for cars and larger vehicles turning into the proposed junction in an area where vehicles travel above the speed limit. Therefore the Council has been unable to substantiate its reason for refusal.

7. Saved Policy T3 of the North West Leicestershire Local Plan Written Statement 2002 (LP), emerging Policy IF4 of the North West Leicestershire Local Plan Publication Version 2016 (LPPV), Leicestershire County Council 6Cs Design Guide require amongst other things that safe and suitable access to the site can be achieved for all people and takes account of the impact on the highway network. This is broadly in accordance with the requirements of paragraphs 32 and 35 of the Framework. The Council have a duty to determine planning applications in accordance with the development plan unless material considerations indicate otherwise.
8. In the planning judgement, it seems to me therefore that having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the basic guidance in the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal.
9. I therefore conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG has been demonstrated and that an award of costs is justified.

Costs Order

10. 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 North West Leicestershire District Council shall pay to Wrenbury Properties Ltd, the costs of the appeal proceedings described in the heading of this decision.
11. The applicant is now invited to submit to North West Leicestershire District 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.

Zoe Raygen

INSPECTOR