
Costs Decision

Site visit made on 5 April 2017

by Stephen Roscoe BEng MSc CEng MICE

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

Decision date: 4th May 2017

Costs application in relation to Appeal Ref: APP/W1850/W/16/3165503 Land at Yarpole, Leominster, Herefordshire HR6 0BA

- 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 Frank Price for a full award of costs against Herefordshire Council.
 - The appeal was against the refusal of the Council to grant planning permission for 6 no. dwellings and 4 no. garages.
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Decision

1. The application is allowed in the terms set out below.

Reasons

2. Planning Practice Guidance (PPG) advises that costs may only 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.

Unreasonable Behaviour

3. The Council's only refusal reason in this case relates to the adequacy of the available visibility splay at the proposed access to the appeal site. The appeal proposal had been the subject of a previous appeal, Ref APP/W1850/W/16/3141786, on which a decision had been issued on 22 March 2016. Whilst this decision had dismissed the appeal, it found that the proposal would not have an unacceptable impact in terms of highway safety, particularly in relation to the proposed access and available visibility. The previous proposal is said by the applicant to have been identical to that which is the subject of this appeal, and this has not been contested.
4. Since the previous appeal was determined, a further traffic survey has been carried out, and further on-site measurements have been taken. Whilst the Council's position on the available visibility distance has changed, the traffic survey shows little difference in vehicle speeds on the road from which the access would be taken. No physical changes have been brought to my attention, apart from some vegetation clearance, which appears to be within the appeal site and has improved visibility at this location. The Council's position has also been based on conditions at a site visit. I have however given this less weight than the information from the survey that was carried out.

5. The Council does not consider that it has acted unreasonably in basing its decision on the most recently produced traffic survey. The survey however does not indicate that matters have materially changed since the previous Inspector's decision. I can therefore see no physical or technical reason to justify the Council's position on the application that is the subject of this appeal.
6. As a result of all of the above points, I am of the opinion that the Council has persisted in objections to elements of a scheme which an Inspector has previously indicated to be acceptable¹. I consider that this represents unreasonable behavior on the part of the Council.

Unnecessary Expense

7. The Council's behavior in refusing the planning application has led to the appellant incurring the cost of proceeding with the subsequent appeal. In view of my finding that the Council's behavior was unreasonable, I consider that this expense was unnecessary as the entire appeal could have been avoided.

Conclusion

8. Having taken into account all other matters raised, none lead me to an alternative decision. I therefore find that substantive unreasonable behavior resulting in unnecessary or wasted expense, as described in PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

9. In exercise of my powers under section 250 of the Local Government Act 1972, and all other powers enabling me in that behalf, I HEREBY ORDER that Herefordshire Council shall pay to Mr Frank Price the total costs incurred in the appeal process, such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Herefordshire 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.

Stephen Roscoe

INSPECTOR

¹ PPG Ref: 16-049-20140306