

Costs Decision

Site visit made on 16 May 2017

by Siobhan Watson BA(Hons) MCD MRTPI

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

Decision date: 30 May 2017

**Costs application in relation to Appeal Ref: APP/E2340/W/3169109
Land off Cob Lane / Old Stone Trough Lane, Kelbrook, Barnoldswick,
BB18 6TT**

- 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 A and Miss E Parker for a full award of costs against Pendle Borough Council.
 - The appeal was against the refusal of planning permission for the erection of up to 17 dwellings with access.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance advises that costs may 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. 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. Examples of this are listed¹ in the PPG and include: "*vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis*".
4. The Local Highway Authority did not object to the proposal and provided a very detailed critique of it to the Local Planning Authority (LPA). The Council chose to ignore that advice. Whilst Members are not bound to accept the advice of their Officers, the Council must still be able to substantiate its reasons for refusal. The Council attempted to do this in its appeal statement but its evidence ignored the substantial technical data that was before it. This data was not just from the applicant but also from the LHA. The Council's highway evidence at appeal was vague, generalised and lacked credibility. Whether or not the applicants were asked to amend the access arrangement following a committee visit is immaterial to the failure of the Council to substantiate its case.
5. In respect of the heritage reason for refusal, I refer to The National Planning Policy Framework, paragraphs 186 and 187, which indicates that local planning authorities should approach decision-taking in a positive way and that they should look for solutions rather than problems; and work proactively with applicants.

¹ Paragraph 049 Reference ID 16-049-20140306

6. LPAs should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The Framework does not specify the level of detail or methodology required. It says that "The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance."² The information provided by the applicants identified the Listed Buildings on a plan, referred to the Listing descriptions and described their settings and how, in the applicants' opinion, the settings would be affected.
7. I consider that the information was proportionate and was sufficient to enable the decision maker to come to a conclusion, especially as the Council has a Conservation Officer who is presumably qualified to assess such matters.
8. Even on the day of the Committee, the applicants were led to believe that the application would be recommended for approval, so up to this point in time, the planning officer had also considered the information to be satisfactory. However, the applicants found out at the Committee that the recommendation had been overturned because the Council suddenly decided that the Heritage Statement was inadequate. At the very least, the applicants should not have been denied their request for more time to provide the information. This was uncooperative and unreasonable behaviour, in the extreme.
9. The appeal could, therefore, have been avoided. Although I have come to a different conclusion to the one originally arrived at by the Council, each decision maker is entitled to attach different amounts of weight to different factors and in any event, material circumstances have changed since the Council's decision.
10. The Council has therefore behaved unreasonably, and thereby caused the party applying for the costs to incur unnecessary expense in the appeal process.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Section 7(2) and Schedule 3 of the Countryside and Rights of Way Act 2000, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Pendle Borough Council shall pay to Mr A and Miss E Parker, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicants are now invited to submit to, to Pendle Borough Council a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Siobhan Watson

INSPECTOR

² National Planning Policy Framework, Paragraph 128