

Costs Decision

Hearing held on 31 May 2017

Site visit made on 31 May 2017

by Daniel Hartley BA Hons MTP MBA MRTPI

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

Decision date: 05 June 2017

Costs application in relation to Appeal Ref: APP/X4725/W/16/3164646 Phase 3 Navigation Point, Cinder Lane, Castleford WF10 1LU

- 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 J Gladwyn (Greenhaven Homes Ltd) for a full award of costs against City of Wakefield Metropolitan District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for approval of details pursuant to condition No 04 of a planning permission Ref 14/02352/REM
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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 (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 costs to incur unnecessary expense in the appeal process.
 3. I note that the appellant did seek views from the Council about whether or not the condition was necessary or "served a useful purpose". However, the Council was not compelled to respond to this matter in respect of the application to discharge condition No 04. Such a matter would have been pertinent in the event that the appellant had submitted an application to vary or delete condition No 04 under Section 73 of the Town and Country Planning Act. In this regard, I do not consider that the Council has acted unreasonably.
 4. The appellant considers that as their investigations did not reveal any physical evidence of a watercourse crossing the appeal site, the Council unreasonably refused the planning application to discharge condition No 04 of planning permission Ref 14/0235/REM. They state that the Council has failed to substantiate its position in terms of the existence of a watercourse crossing the site and that the condition is unnecessary as there is no watercourse to divert.
 5. I do consider that in responding to the appeal the Council has provided sufficient evidence to suggest that there may, at some time, have been a watercourse crossing the site. Furthermore, it is clear that the appellant needed to undertake further investigations on the site in order to establish whether or not there existed a watercourse.
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6. However, and notwithstanding the above, I note that the appellant has been in discussions with the Council for some time (since at least 2015) about the alleged existence of a watercourse on the site. At the hearing, the LLFA confirmed that they had been aware of the WMDC main drainage record plan (appendix D of the Council's appeal statement) since "June/July 2016".
7. Had the WMDC main drainage plan been made available to the appellant at a much earlier date, and at least when the planning application was submitted, it would have enabled the appellant to undertake further site investigations along this route. Given that the WMDC main drainage record plan was only made available at a late stage in the appeal process, it has meant that the appellant has only been able to carry out further site investigations in May 2017. Given the wording of the planning condition, the results of such site investigations have largely been responsible for my conclusion that there is no watercourse on the site and that the subject planning condition can be discharged.
8. In respect of the above, I consider that the Council has displayed the sort of unreasonable behaviour as outlined in the PPG. This states that examples of unreasonable behaviour which may result in an award of costs include *"only supplying relevant information at appeal when it was previously requested, but not provided, at application stage"* and *"introducing fresh and substantial evidence at a late stage necessitating extra expense for preparatory work which would not have otherwise arisen"*.
9. I am not certain why the Council did not refer to the WMDC main drainage record plan in its planning committee report, or why this was not mentioned to the appellant at a much earlier stage. Furthermore, the Council's decision notice did not offer a detailed explanation as to why the submitted details were not acceptable. I consider that this resulted in a level of uncertainty for the appellant and hence adds to the aforementioned unreasonable behaviour.

Conclusion

10. For the reasons outlined above, I conclude that the Council has acted unreasonably and that the appellant has been put to unnecessary and wasted time and expense in pursuing the appeal.

Costs Order

11. 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 Wakefield Metropolitan District Council shall pay to Mr J Gladwyn (Greenhaven Homes Ltd), 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 applicant is now invited to submit to Wakefield Metropolitan 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.

Daniel Hartley

INSPECTOR