

Costs Decision

Hearing held on 31 May 2017

Site visit made on 31 May 2017

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

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

Decision date: 13th June 2017

Costs application in relation to Appeal Ref: APP/R2520/W/16/3164899 Thorpe Park Lodges, Middle Lane, Thorpe on the Hill, LN6 9AJ

- 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 Karl Dineen for a full award of costs against North Kesteven District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of new building (part two storey / part single storey) comprising 3 individual units to accommodate new reception area/laundry/staff room/store with park manager's accommodation above (unit 3) and ancillary commercial units with no mezzanine floor (units 1 and 2) to accommodate the following possible uses: gym / fitness studio, bike hire store, fishing tackle store or convenience store.
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Decision

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

The submissions for Mr Dineen

2. The costs application was submitted in writing. The following additional points were made orally at the hearing.
3. The appellant considers that the Council have acted unreasonably after a lengthy period of negotiation which was then turned on its head in 5 working days, with the decision being written by a different Officer to the one who had been dealing with the case. This has caused financial hardship and has stopped the development of the business by an extended period.

The response by North Kesteven District Council

4. The Council's response was made in writing. The following additional points were made orally at the hearing.
5. The Council has set out comprehensive reasons in their statement and has fully exercised their planning functions. While they accept the positive recommendation of the previous Case Officer, they determined the application on a balance of considerations and have applied the appropriate policies and tests in this respect.

Reasons

6. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved
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- unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
7. The applicant submits that the Council has acted unreasonably in refusing consent in the prevention of development which should be clearly permitted, and that the Council has acted unreasonably leading up to the determination of the application, which specifically, through a change of case officer, led to a refusal of consent when it had been indicated that planning permission was likely to be forthcoming.
 8. While I found no conflict with the development plan in respect of the provision of 2 commercial units as part of the scheme, it will be seen from my decision that I agree with the Council that there were sufficient grounds for refusing planning permission in respect of the residential element of the proposal.
 9. I accept that there has been some confusion in the interpretation of the consultation comments from the Economic Development Team. From my reading of the final comments, these still expressed caution, albeit to a lesser degree due to the amendments put forward. The different case officers, in their capacity as decision maker, clearly interpreted these comments differently when undertaking their assessment of the proposals, but ultimately led to a reason for refusal on this issue.
 10. While I can appreciate the applicant's frustrations at an apparent last minute change of heart, the second case officer, as a more senior officer, did not have to accept the advice of the original officer. While I found no conflict with the proposals in respect of the commercial aspect, in the Officer Report and the Decision Notice, the Council's concerns were well articulated concluding against the development plan and the National Planning Policy Framework (the Framework). The Council also substantiated their reasons for refusal as part of the appeal proceedings.
 11. Paragraph 187 of the Framework requires that local planning authorities should look for solutions rather than problems, and work pro-actively to secure developments that improve the economic, social and environmental conditions of the area. While the result of the amendments ultimately still led to the refusal of consent following an internal review, I consider that such negotiations were entered into in the spirit of the above and on further detailed consideration of the final amendments, the Council found harm. It was also clear that the Council considered at that point there would be no merit in any further negotiations and proceeded to determine the application. This does not, in my view, amount to unreasonable behaviour. Any further negotiations, were unlikely to, at that point, resolve the ongoing concerns, and I am mindful that prolonging proceedings at this point, could itself have given rise to the risk of an award of costs.
 12. Similarly, as I have referenced in my decision, the policy requirements in respect of demonstrating an essential need for a dwelling in the countryside are clearly set out in the relevant policies in both the North Kesteven Local Plan, and the newly adopted Central Lincolnshire Local Plan. The policies of the latter when this was un-adopted, were also referenced in the Decision Notice. While the Council may not have specifically asked for this information, the need to supply details relating to the functional requirements of the business and any accounts as part of demonstrating their case was clear.

13. Finally, the applicant is also concerned that the Council Committee Members were not given the opportunity to decide the application, in spite of the applicant's request. However, the Council were entitled to determine the application under delegated powers, as per their procedures. I also note that this was reviewed by the Development Manager at the Council and thus I find no unreasonable behaviour in this respect.

Conclusion

14. Overall I conclude that unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. Therefore, no award is made.

C Searson
INSPECTOR