
Costs Decision

Site visit made on 16 May 2017

by Louise Nurser BA (Hons) Dip UP MRTPI

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

Decision date: 23 June 2017

Costs application in relation to Appeal Ref: APP/B3030/W/17/3168578 Brownlows Hill, Coddington NG24 2QA

- 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 Malcolm Parker for a full award of costs against Newark & Sherwood District Council.
 - The appeal was against the refusal of planning permission for erection of 2 (No.) Three Bedroom Houses.
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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 costs to incur unnecessary or wasted expense in the appeal process. The appellant is of the view that the Council has behaved unreasonably in a substantive way. Paragraph 49¹ sets out examples of behaviour that might rise to a substantive aware of costs against a Local Planning Authority and this includes delaying development which should clearly be permitted having regard to national policy, having regard to its accordance with the development plan, national policy and any other material considerations; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; failing to have regard to the expert professional advice and acting contrary to, or not following, well-established case law and statute.
3. The appellant also considers that there had been no change in circumstances since the positive pre application advice had been proffered; that the decision was made without due regard to an appeal decision relating to the five year supply of deliverable housing; and that some members were not objective in considering the Highway Authority's technical response to the planning application.
4. The application was recommended for approval at the Planning Committee, in line with pre application advice and subsequently refused. However, considerations of planning applications necessarily involve matters of planning judgement and Local Planning Authorities are not bound to accept the recommendations of their officers, or be bound by pre application advice. Nevertheless, if officers' professional or technical advice is not followed

¹ ID: 16-049-20140306

- authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence to support the decision in all respects.
5. The Planning Committee visited the appeal site and made the judgement that the proposed development would have an adverse impact on the character and appearance of the Conservation Area. This is a subjective judgement and one which the Planning Committee were entitled to take, even though it did not accord with the conclusions of the Conservation Officer. Consequently, following consideration of the information before them, including the site visit, the planning judgement was not unreasonable.
 6. In relation, to the impact on highway safety, the Council did not produce further evidence to justify why it concluded that the appeal proposal raised substantial highway safety matters contrary to the consultation response provided by the highway authority, relying on local knowledge. Therefore, in this instance the Council's behaviour was unreasonable.
 7. The report to the Planning Committee put forward the position that the Council was able, at that time, to demonstrate a five year supply of deliverable housing. This position was reasonable, notwithstanding a previous appeal decision, where an Inspector had concluded on the balance of the evidence before them that the Council could not demonstrate a five year supply.
 8. The minutes of the Planning Committee do not refer to the provisions of the development plan and the statutory requirements of decision making. Nonetheless, the grounds for refusing the application were clear from the minutes and the reasons for refusal articulate these by reference to both the adopted development plan and the Framework.
 9. I have found that the Council has behaved unreasonably in respect of the substance of the case in pursuing the highway aspect of the case. I conclude that a partial award of costs is justified, in respect of the costs incurred by the appellant in respect of highway matters.
 10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

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 Newark & Sherwood District Council shall pay to Mr Malcolm 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 applicant is now invited to submit to Newark & Sherwood 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.

L Nurser

INSPECTOR