
Costs Decision

Site visit made on 23 May 2017

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 18 July 2017

Costs application in relation to Appeal Ref: APP/E0915/W/17/3168682 vacant land at Boustead Hill, Burgh-by-Sands, Carlisle, Cumbria CA5 6AB

- 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 Jonathan Brown for a full award of costs against Carlisle City Council.
 - The appeal was against the refusal of planning permission for the erection of 2no. holiday units together with single storey store, associated landscaping.
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Decision

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

Reasons

2. Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The Guidance also makes it clear that a local planning authority is at risk of an award of costs against it if it fails to produce evidence to substantiate each reason for refusal on appeal, and / or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
3. While the Council are not duty bound to follow the advice of their professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. In this instance I have noted the recommendation of the Council's officers, but I am satisfied that the decision was essentially one in which the exercise of judgement was required and that Members were entitled not to accept the professional advice so long as a case could be made for the contrary view. In exercising that judgement it is clear that Members had visited the site and so were able to express that judgement in full awareness of the proposal, the site and its surroundings, including nearby listed buildings and the surrounding tree and hedge cover.
4. However, it is not sufficient merely to state that Members are entitled to use their judgement as a basis for not following the advice of their professional officers. I am satisfied that the Council have clearly, albeit briefly, explained their reasons for refusal in respect of the first and second refusal reasons. Whilst I have reached a different conclusion in respect of the appropriateness of the proposed external materials and how those, and the form, scale and massing relate to the nearby listed buildings and the settlement of Boustead Hill as a whole, I consider that the Members were entitled to reach that

conclusion and that the Council have adequately defended those reasons at appeal. Thus, in these respects, I conclude that the Council have not behaved unreasonably and therefore it cannot follow that the appellant has been put to unnecessary or wasted expense.

5. With regard to the third reason for refusal, I find the reason itself to be lacking in detail as to how or why the tree in question makes a positive contribution to the character of the area. Further, the Council's statement of case merely repeats the reason for refusal and does not expand on it to set out the contrary view for its retention or how its removal would harm the character of the site and surrounding area.
6. It is also apparent that the Committee were advised by the Council's own Tree Officer that the tree was considered to be of poor quality. It was only in responding to the appellant's application for an award of costs that the Council stated that it was the ash tree's size that they considered made the positive contribution to the character of the area. Thus, in respect of the third of the refusal reasons, I am not persuaded that the Council has put forward a sufficiently robust case to justify a conclusion contrary to the advice of their professional officers.
7. This amounts to unreasonable behaviour. However, I am not persuaded that that has entailed unnecessary or wasted expense for the appellant. As I have set out above, I am satisfied that the Council were justified in reaching the conclusions that they did in respect of the first two reasons for refusal, and that those reasons have been adequately, albeit briefly, supported at appeal. With regard to the third reason refusal, the appellant's rebuttal to this is brief, concise and to the point and I am not persuaded that this has entailed any great time or expense over and above that relating to the other refusal reasons which, as I have set out above, I consider that the Council were not unreasonable in reaching.

Conclusion

8. Thus, for the reasons I have set out, I am not persuaded that the Council have acted unreasonably in respect of the first and second reasons for refusal. It cannot follow therefore, that unnecessary or wasted expense has been incurred by the appellant. With regard to the third refusal reason, whilst I have concluded that the Council have acted unreasonably, it has not been adequately demonstrated that this was responsible for any unnecessary or wasted expense, nor has it that the decision to retain the services of a firm of chartered surveyors was directly linked to that particularly refusal reason.
9. In these circumstances therefore, an award of costs is not justified.

Graeme Robbie

INSPECTOR