The Planning Inspectorate

# Costs Decision

Site visit made on 27 June 2017

**by Beverley Wilders BA (Hons) PgDurp MRTPI**

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

**Decision date: 25 July 2017**

**Costs application in relation to Appeal Ref: APP/R1038/W/17/3172870**
**20 Pond Lane, Wingerworth S42 6TW**

- 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 Hooper for a full award of costs against North East Derbyshire District Council.
- The appeal was against the refusal of planning permission for the re-submission of a previous application for a new dwelling.

## Decision

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

## Reasons

2. Paragraph 030 of the National Planning Practice Guidance (NPPG) advises that 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.

3. Paragraph 049 of the NPPG states that examples of unreasonable behaviour by local planning authorities includes preventing or delaying development which should clearly be permitted, vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis and refusing planning permission on a planning ground capable of being dealt with by conditions.

4. The appellant considers that in refusing planning permission contrary to Officer advice and contrary to the technical advice of the Highway Authority and the Drainage Authority, the Council has behaved unreasonably, particularly given that in his view vague, generalised and inaccurate assertions have been made about the proposals impact which are unsupported by any objective analysis.

5. The Council's statement refers to the size of plots and dwellings in the immediate area, commenting that the plot would be the smallest and the proposed dwelling one of the largest in the area. Whilst I acknowledge that it appears that there are plots of a similar size nearby, I do not consider that this in itself means that the Council has behaved unreasonably. The decision on whether the impact of the proposal on the character and appearance of the area is acceptable is one which is a matter of judgement and I am satisfied that the Council has provided sufficient evidence to substantiate its reason for refusal. However for the reasons set out in my decision letter, I make a different judgement on this issue.

6. With regard to the impact on the living conditions of occupiers of neighbouring properties, it is to be expected that the Council's case at appeal will differ to that presented by Officers at the application stage bearing in mind that the Planning Committee did not accept the Officer recommendation. I am satisfied that the Council has produced sufficient evidence to substantiate its reason for refusal relating to living conditions and as can be seen from my decision letter, I agree with the Council on this issue. Though the appellant made reference to a Council document called Successful Places and whilst this was also referred to in the Council's Officer report, I have not been provided with a copy of this document and in any event I do not consider the proposal to be acceptable for the reasons stated in my decision letter.

7. No objections were raised to the proposal by either the Highway Authority or the Drainage Authority and there is an extant permission for a dwelling on the appeal site (Ref 15/00763/OL). I acknowledge that the proposed block plan does not identify how parking and manoeuvring for the site would be accommodated. However bearing in mind that a garage is shown on the submitted plans, that space is shown in front of the proposed dwelling, that no objections were raised by the Highway Authority and that the Council has not produced any substantive evidence to contradict the appellant's evidence or the findings of the Highway Authority I consider that the Council has failed to produce sufficient evidence to substantiate the reason for refusal relating to parking and manoeuvring.

8. Similarly the Council has failed to produce sufficient evidence to substantiate the reason for refusal relating to drainage. Though there was some uncertainty regarding the method of drainage at the application stage, no objections were raised to the proposal by the Drainage Authority and the appellant has submitted additional information regarding drainage with the appeal. Whilst Policy CSU4 of the North East Derbyshire Local Plan does require applicants to demonstrate that an acceptable alternative is available where drainage cannot be achieved by connection to the main sewerage system, the Council has not produced any evidence to demonstrate that the appellant's proposed system is not acceptable. Bearing this in mind and the fact that there is an extant permission for a dwelling on the site which would also require surface water drainage, I consider that the Council has failed to produce sufficient evidence to substantiate the reason for refusal relating to drainage and has refused planning permission on a planning ground capable of being dealt with by conditions.

9. Members of the Planning Committee were entitled not to accept the professional advice of Officers on the merits of the proposal provided that a case could be made for the contrary view. However for the reasons stated, I do not consider that a sufficient case has been made with regard to parking and manoeuvring and to drainage.

10. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has been demonstrated. For this reason, and having regard to all matters raised, 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 North East Derbyshire District Council shall pay to Mr Hooper, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the second and third reasons for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to North East Derbyshire 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.

*Beverley Wilders*

INSPECTOR