
Costs Decisions

Site visit made on 25 July 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 8th August 2017

Costs application A in relation to Appeal Ref: APP/N2535/W/17/3172910 Land at Granary Close, Morton, Gainsborough, Lincolnshire

- 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 West Lindsey District Council for a full award of costs against Mr and Mrs Youngman.
 - The appeal was against the refusal of planning permission for outline application for the erection of 9 dwellings.
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Costs application B in relation to Appeal Ref: APP/N2535/W/17/3172910 Land at Granary Close, Morton, Gainsborough, Lincolnshire

- 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 and Mrs Youngman for a full award of costs against West Lindsey District Council.
 - The appeal was against the refusal of planning permission for outline application for the erection of 9 dwellings.
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Procedural Matter

1. The two main parties in the appeal have each made an application for costs against the other and both are addressed in this single decision letter.

Decisions

2. Application A for an award of costs is refused.
3. Application B for an award of costs is refused.

Reasons

4. The national Planning Practice Guidance (PPG) states that parties in planning appeals normally meet their own expenses but 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. Unreasonable behaviour in this context may be procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal.

Application A

5. The PPG provides examples of the types of behaviour which may give rise to a substantive award of costs against an appellant. One example of where this may occur is when the appeal follows a recent appeal decision in respect of the

same, or a very similar development on the same, or substantially the same site, where an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period. The Council's application is based on such an example in this case.

6. However, I consider that the second appeal related to a development that was not materially the same as that considered in the first. I accept that the appellant had considered the Inspector's decision in the first appeal and the second appeal concerned the Council's refusal of a substantially reduced scheme from 37 to 9 dwellings on a somewhat smaller site area.
7. I therefore find that, in respect of Application A, unreasonable behaviour on the part of the appellant resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. I therefore conclude that the award of costs be refused.

Application B

8. The PPG advises that costs cannot be claimed for the period during the determination of the planning application but that parties are expected to have behaved reasonably throughout the planning process. The PPG also provides examples of the types of behaviour which may give rise to a substantive or procedural award of costs against a local planning authority.
9. Applying the PPG examples the counter claim of costs appears to be based on unreasonable behaviour on the part of the Council in a procedural sense due to lack of cooperation with the applicant and in a substantive sense by not adequately assessing the changes made to the scheme. The evidence suggests that pre-application engagement had been offered, albeit at a time of uncertainty when the policies for Morton were still under examination, and that the amendments made to the scheme had been fully considered as demonstrated by the Council's delegated report.
10. I am not persuaded that there was a more helpful approach that the Council could have taken that would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.
11. I therefore find that, in respect of Application B, unreasonable behaviour on the part of the Council resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. I therefore conclude that the award of costs be refused.

Jonathan Price

INSPECTOR