
Costs Decision

Hearing Held on 19 July 2017

Site visit made on 19 July 2017

by Nick Palmer BA (Hons) BPI MRTPI

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

Decision date: 17 August 2017

Costs application in relation to Appeal Ref: APP/M1005/W/17/3167093 Amber Valley Rugby Club, Lower Somercotes Road, Somercotes, Derbyshire

- 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 Somercotes Against Development for a full award of costs against Amber Valley Borough Council and/or Carter Construction Ltd.
 - The hearing was in connection with an appeal against the refusal of planning permission for residential development for up to 200 dwellings including landscaping, open space and storm water balancing.
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Decision

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

The submissions for Somercotes Against Development

2. The basis for the application is that because the Council did not defend its decision, the applicants had to employ a consultant to investigate the evidence that had been presented by the appellant and reviewed on behalf of the Council. The applicants state that communities should not have to do the job of the local authority.
3. In support of their case the applicants state that their consultant's investigation shows that the developer and his consultants did not undertake a thorough and comprehensive ground investigation. Furthermore the Council's consultant had clear reservations in this regard.

The response by Amber Valley Borough Council

4. The Council's response is that parties are normally expected to meet their own costs. The applicants have exercised their right to take part in the appeal and they would have done so even if the appeal had been contested by the Council. The Council says that the applicants have not identified any unreasonable behaviour on the part of the Council.

The response by Carter Construction Ltd

5. The appellant responded orally at the Hearing, saying that there was no allegation of unreasonable behaviour on the appellant's behalf. The appellant had undertaken ground investigations which had been at his expense.

Reasons

6. 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.
7. The appellant carried out a number of ground investigations which were discussed at each stage with the Council's Scientific Officer. The Council's consultant provided advice which was acted upon by the appellant. The result of this process was that the Council's planning officer was satisfied that sufficient information had been presented to enable the application to be recommended for approval.
8. The Planning Board exercised its democratic duty in refusing the application contrary to the officer's recommendation. In doing so, the Board would have taken into account the strong objections submitted by interested parties which were based on local knowledge of the site. The Board would also have had regard to the findings of the Council's consultant who while expressing general satisfaction with the investigations that had been carried out had nevertheless expressed some reservations as to uncertainty arising from the further investigations required.
9. I have concluded in my decision on the appeal that the suggested conditions would not be reasonable and on this basis the Council's decision was justified. It is not clear as to why the Council decided not to defend its decision. Having regard to this lack of explanation I find that the Council's decision not to contest the appeal was unreasonable.
10. This put the applicants in the position of having to consider employing a consultant to defend their case. The evidence that had been submitted by the appellant and reviewed by the Council's consultant was highly technical and it was reasonable that technical expertise was obtained in order that the applicants' case could be effectively presented.
11. I accept that the applicants would doubtless have still participated in the appeal even if the Council had contested its decision. It is reasonable that parties meet their own costs in such circumstances. However for the above reasons the particular circumstances of this appeal necessitated the employment of a suitably qualified expert. This was at the expense of the local community's action group.
12. For these reasons I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance has been demonstrated. I conclude that a partial award of costs against Amber Valley Borough Council is justified. This should be limited to the expense incurred in employing the applicant's consultant.

Costs Order

13. 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 Amber Valley Borough Council shall pay to Somercotes Against Development, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in employing Stephen Fryer, Independent

Consultant of GeoDelft Environmental; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicants are now invited to submit to Amber Valley Borough 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.

Nick Palmer

INSPECTOR