
Costs Decision

Site visit made on 3 May 2017

by John Dowsett MA DipURP DipUD MRTPI

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

Decision date: 30th May 2017

Costs application in relation to Appeal Ref: APP/V2004/W/17/3167007 287 Ings Road, Hull, East Yorkshire HU8 0NB

- 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 N & E Commercial Properties Limited for a partial award of costs against Kingston-upon-Hull City Council.
 - The appeal was against the refusal of planning permission for two dwellings and associated parking spaces on land to the rear of the existing dwelling house.
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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 (PPG) 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.
 3. The appellant submits that the Council has acted unreasonably in that it has gone against the advice of its officers without good reason and has failed to substantiate the reason for refusal on the grounds of highway safety.
 4. The PPG makes it clear that a local planning authority is at risk of an award of costs 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.
 5. Whilst the Council is not duty bound to follow the advice of its professional officers, if a different conclusion 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 case, the Highway Authority did not raise any objections to the proposal. The Council state that the Committee members made the decision based on local knowledge, supported by third party representations, and that whilst the physical capacity and design of the road is addressed by the Highways officer, the actual traffic levels were not commented upon.
 6. Matters of highway safety fall within the remit of the Highway Authority and it would be expected that had there been concerns in respect of traffic levels they would have been addressed in the Highway Authority's comments. Nevertheless, very little other evidence was put forward to support the reason
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for refusal and to demonstrate that there are existing highway capacity and safety problems in the locality, and if there are, how this situation would be made worse by the proposed development. There was also no objective analysis of the current and proposed situations which would support this contention.

7. In the planning judgement, it appears to me that, although I have dismissed the appeal for other reasons, planning permission should not have been withheld on this ground. The refusal of planning permission on highway safety grounds therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG and the appellant has been faced with unnecessary expense in preparing and addressing this aspect of the appeal.
8. 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

9. 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 Kingston-upon-Hull City Council shall pay to N & E Commercial Properties Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing and presenting the case in respect of highways matters; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Kingston-upon-Hull City 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.

John Dowsett

INSPECTOR