The Planning Inspectorate

Costs Decision

Site visit made on 14 September 2017

by Caroline Jones BA (Hons) DipTP MTP MRTPI

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

Decision date: 19th October 2017

Costs application in relation to Appeal Ref: APP/H0928/17/3178108
Land adjacent to Kirkby Thore Industrial Estate, Penrith CA10 1XA

- 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 T Bradley for a full award of costs against Eden District Council.
- The appeal was against the refusal of planning permission for proposed change of use to store caravans / trailers and steel containers to use as self-storage units.

Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

3. 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.

4. The applicant is concerned that the reasons for refusal were not robust and could be overcome by suitable conditions. It is submitted that the Council failed to substantiate with evidence each reason for refusal and that the appeal statement does nothing to add substance to the reasons for refusal and instead uses vague and inaccurate assertions.

5. While the Council is not duty bound to follow the advice of its 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.

6. In substantiating their case in relation to the fear of crime, the Council have not gone beyond what I consider to be vague and generalised assertions which are not backed up by any compelling evidence that the proposal would lead to any realistic increase in crime or the fear of crime. In this regard I find the Council's behaviour was unreasonable and that the appellant was put to unnecessary expense in addressing this issue as part of the appeal process.

7. In relation to the second reason for refusal, despite the Council reaching a different conclusion to that recommended by its officers, the consideration of planning applications and appeals involve matters of judgement which at times are finely balanced. The effect of a proposed development on the character and appearance of an area is a more subjective matter, often determined by an exercise of judgement in the particular circumstances of the case. The reason for refusal set out in the decision notice is complete, precise, specific and relevant to the application. It also clearly states the policies of the development plan that the proposal would be in conflict. This reason has been adequately substantiated by the Council in its appeal statement and it has not acted unreasonably in this regard.

8. Nonetheless, the Council has failed to produce evidence to substantiate its reason for refusal in relation to the fear of crime. Thus I find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described in the PPG, 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 Eden District Council shall pay to Mr T Bradley, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to defending the Council's view that the proposal would lead to an increase in the fear of crime; such costs to be assessed in the Senior Courts Costs Office if not agreed.

10. The applicant is now invited to submit to Eden District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount.

Caroline Jones

INSPECTOR