
Costs Decisions

Site visit made on 31 October 2017

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

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

Decision date: 04 December 2017

Costs application A - in relation to Appeal Ref:

APP/Z4718/W/17/3180494

Land at Old Lane / Taylor Lane, Scapegoat Hill, Huddersfield

- 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 Yorkshire Baptist Association (Scapegoat Hill Baptist Chapel) for a partial award of costs against Kirklees Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for the erection of three detached dwellings.
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Costs application B - in relation to Appeal Ref:

APP/Z4718/W/17/3178805

Land at Old Lane / Taylor Lane, Scapegoat Hill, Huddersfield

- 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 Brierstone Limited for a full award of costs against Kirklees Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for the erection of two dwellings.
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Costs Application A

Decision

1. The application for an award of costs is refused.

Costs Application B

Decision

2. The application for an award of costs is refused.

Costs Application A

Reasons

3. 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. There are two claims to assess. Firstly, whether the Council's handling of the planning application, in terms of the time it took to determine, was unreasonable. Secondly, whether the Council demonstrated reasonable grounds for refusing planning permission, in part, on the basis of harm to highway safety in the absence of any objection from highway officers.

4. With regard to the first claim, the application was validated on 3 October 2015 with a target date for determination of 3 December of the same year. However, there were highway objections to the proposal. Rather than see the application refused the appellant requested the opportunity to resolve these issues. To that end, as part of ongoing discussions, the appellant ultimately consented to an extension until 31 March 2017.
5. On 9 February 2017 highway officers confirmed that they no longer had any objections to the scheme on highway safety grounds. Considering the application in isolation, as a decision delegated to officers, the Council could then have determined the application. However, another application for two houses on the site (Appeal B) had been made. It had been decided that given the extent of local concerns the decision on this other application was to be made by the planning committee rather than by officers. The first committee meeting with space on the agenda for this application took place on 20 April 2017. A decision in relation to the application in Appeal B was made at this meeting.
6. Consistency in decision making in planning is important and a lack of consistency can form the basis of a costs application. As a result, it was reasonable that officers delayed determining the application until the committee had decided the Council's position in relation to highway safety associated with development of the site by determining the application in Appeal B. It would have been helpful though if this approach had been explained to the appellant so that the reason for the delay would have been understood.
7. The appellant had the opportunity to appeal against non-determination once the extension to 31 March 2017 had passed, but chose not to. Although the decision notice was not issued until almost three weeks after the planning committee met, this delay is insufficient to amount to unreasonable behaviour. Moreover, there is no evidence of unnecessary expense being incurred during this period.
8. In relation to the second claim, whilst the highway department did not object on highway safety grounds this formed one of the Council's reasons for refusal. The reason given was that notwithstanding the highway improvements that would take place to the highway network as part of the scheme the proposed development would intensify highway use and potentially lead to conflict between vehicles and pedestrians.
9. Whilst the number of vehicle, pedestrian and cyclist movements generated by the scheme would be small the Council had to consider this in context. Both lanes, particularly Old Lane, are unusually steep and beyond the appeal site both narrow lanes would remain unwidened. The traffic survey which revealed the level of traffic currently using these lanes was not submitted until appeal stage. As a result, it was a matter of planning judgement at the time that the application was determined as to whether in the context of existing unquantified traffic levels the development would increase use of the substandard lanes to the extent that highway safety would be harmed.
10. Officers knew that in relation to Appeal B members had viewed the site, received professional advice and were aware of the concerns of local residents. Taking into account the specific circumstances of the site and their local knowledge, using their judgement members of the committee decided that

highway safety would be harmed. Given that the scheme in Appeal A was for more dwellings than the scheme in Appeal B, it was reasonable and consistent for officers on behalf of the Council to reach the same conclusion in relation to the proposed development in Appeal A. Although for the reasons given in the appeal decision I did not agree with the Council through its reason for refusal and officer report it gave reasonable grounds for refusing the application in relation to highway safety.

11. Reference was made to an appeal decision¹ for residential development on a nearby site where the Inspector found that highway safety would not be harmed. However, that application was wholly in outline with no point of access onto the highway proposed. On the basis of the Inspector's reasoning it is clear that she only considered highway safety in terms of the junction of Taylor Lane and Pike Law Road, which is some distance to the south west of where Old Lane meets Taylor Lane. Given this consideration, and the fact that the proposal in that scheme was for only one dwelling, it is sufficiently different to the proposal in Appeal A for it not to demonstrate that highway safety would not be harmed.
12. In relation to the second claim, I therefore find that the Council did not act unreasonably.
13. Taking all these matters into account, I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated. An award of costs is therefore not justified.

Cost Application B

Reasons

14. 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. There are two claims to assess. Firstly, whether the Council's handling of the planning application, in terms of the time it took to determine, was unreasonable. Secondly, whether the Council demonstrated reasonable grounds for refusing planning permission on the basis of harm to highway safety in the absence of any objection from highway or planning officers.
15. In relation to the first claim, the planning application was validated on 2 December 2016. As a consequence, the statutory 8 week period for determining the application expired on 27 January 2017. A meeting was held on 19 January 2017 to discuss concerns the Council had regarding the proposal. To address the concerns identified a set of revised drawings was received by the Council on 10 February 2017. The appellant was advised at the meeting that the next planning committee meeting was on 9 March 2017. However, given the changes and the level of local concerns about the proposal it was decided to undertake a further round of public consultation. In light of this, and the fullness of the agenda for March's planning committee meeting, the appellant was advised that the application would be taken to the next planning committee meeting on 20 April 2017.
16. The appellant had the opportunity at this point to appeal against non-determination but chose not to. Instead the appellant agreed to an extension

¹ Ref APP/Z4718/W/15/3012823

- to 24 April 2017. Although the decision notice was not issued until just over two weeks after the extension expired this delay is insufficient to amount to unreasonable behaviour. Moreover, there is no evidence of unnecessary expense being incurred during this time period.
17. In relation to the second claim, although the highway department and planning officers did not object on highway safety grounds this constituted the Council's reason for refusal. The reason given was that notwithstanding the highway improvements that would take place to the highway network as part of the scheme the proposed development would intensify highway use and potentially lead to conflict between vehicles and pedestrians.
 18. Whilst the number of vehicle, pedestrian and cyclist movements generated by the scheme would be small the Council committee had to consider this in context. Both lanes, particularly Old Lane, are unusually steep and beyond the appeal site both narrow lanes would remain unwidened. The traffic survey which revealed the level of traffic currently using these lanes was not submitted until appeal stage. As a result, it was a matter of planning judgement at the time that the application was determined as to whether in the context of existing unquantified traffic levels the development would increase use of the substandard lanes to the extent that highway safety would be harmed.
 19. Members viewed the site, received professional advice and were made aware of the concerns of local residents. As a result, given the site specific circumstances and their local knowledge members of the committee were entitled to exercise their judgement as to whether highway safety would be harmed. Although for the reasons given in the appeal decision I did not agree with the Council, through its reason for refusal and officer report it gave reasonable grounds in relation to highway safety for refusing the application.
 20. Reference was made to an appeal decision² for residential development on a nearby site where the Inspector found that highway safety would not be harmed. However, that application was wholly in outline with no point of access onto the highway proposed. On the basis of the Inspector's reasoning it is clear that she only considered highway safety in terms of the junction of Taylor Lane and Pike Law Road, which is some distance to the south west of where Old Lane meets Taylor Lane. Given this consideration, and the fact that the proposal in that scheme was for only one dwelling, it is sufficiently different to the proposal in Appeal B for it not to demonstrate that highway safety would not be harmed.
 21. In relation to the second claim, I therefore find that the Council did not act unreasonably.
 22. For the reasons given above, I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated. An award of costs is therefore not justified.

Ian Radcliffe

Inspector

² Ref APP/Z4718/W/15/3012823