
Costs Decision

Site visit made on 12 December 2017

by Katie McDonald MSc MRTPI

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

Decision date: 12 January 2018

Costs application in relation to Appeal Ref: APP/H0928/W/17/3183181 Land Opposite Ivy House, Ousby CA10 1QA

- 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 Boulton for a full award of costs against Eden District Council.
 - The appeal was against the refusal of planning permission for the residential development for up to five dwellings with all matters reserved.
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Decision

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

Reasons

2. Planning Practice Guidance indicates that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
3. Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals.
4. The applicant submits that the Council have acted unreasonably on 4 substantive grounds:
 - (a) Failure to produce evidence to substantiate each reason for refusal on appeal.
 - (b) Vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
 - (c) Acting contrary to, or not following, well established case law.
 - (d) Not determining similar cases in a consistent manner.
5. The Council's Planning Committee refused planning permission contrary to officer recommendation. While the Council is not duty bound to follow its officer's recommendations, if a different decision is reached the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and substantiate that reasoning.
6. Furthermore, as the Council does not have a 5 year housing land supply, paragraph 14 of the National Planning Policy Framework would have required

- them to have demonstrated why any adverse impacts of granting planning permission would have significantly and demonstrably outweighed the benefits.
7. The Council's appeal statement provides an update on the progression of their new Local Plan, in particular the weight they believe should be attributed to draft Policy LS1 and their 5 year housing land supply position.
 8. In terms of their observations on the appellant's grounds of appeal, the Council state that on the basis of draft Policy LS1, the village of Ousby is no longer a Local Service Centre, but a Smaller Village and Hamlet and its location would now be unsustainable. They also balance the harm to the character of the area with the lack of a five year housing supply, and contend that the proposal would result in irreparable, permanent and demonstrable harm that would outweigh the benefits.
 9. The reasons for refusal are clear and the relevant development plan policies are set out. However, in their statement, save for repeating the reasons for refusal, the Council does not provide any objective analysis, evidence or actual justification on planning grounds to substantiate the asserted planning harm on all of the reasons for refusal. Furthermore, whilst they do apply the 'tilted' balance under paragraph 14 of the Framework their reasoning is also unsupported by any objective analysis.
 10. I have little information before me regarding the other scheme referred to by the applicant, and as each application falls to be considered upon its own merits, I find that an award of costs on this ground would not be justified.
 11. Yet, notwithstanding this, I do find that the Council have behaved unreasonably on the other substantive grounds. Consequently, the applicant has incurred unnecessary expense in the appeal process and I conclude that the application for an award of costs is justified.

Costs Order

12. 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 Boulton, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. 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 agreement as to the amount.

Katie McDonald

INSPECTOR