



Costs Decision

Site visit made on 18 June 2019

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2019

Costs application in relation to Appeal Ref: APP/P3420/W/19/3221341 Land off Watermills Road, Chesterton

- 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 Newcastle-Under-Lyme Borough Council for a full award of costs against Carden Developments Ltd.
 - The appeal was against the refusal of planning permission for approval of reserved matters for appearance, landscaping, layout and scale for residential development of up to 65 dwellings.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, 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 Council's case is that the appellant has pursued an appeal rather than submit a revised planning application. The Council's letter of notification of the appeal, dated 19 April 2019, was based on the plans and description submitted with the original application and correctly invited comments to be made to the Planning Inspectorate.
4. When the appeal was made, the appellant requested that I make my decision on the basis of revised plans submitted with the appeal. The amendments comprised an increase in number of dwellings from 60 to 63, the repositioning of dwellings closer to the highway, the removal of the bund and the relocation of the Coppice Walk.
5. Whilst the appellant has engaged with the Council and an interested party following determination of the application, I have no substantive evidence that the necessary consultation was carried out on the proposed changes and was therefore not satisfied that the interests of some parties would not be prejudiced. I therefore concluded within the appeal decision that the appeal should be determined on the basis of the plans submitted to the Council and upon which it based its decision.
6. The appellant has not sought to defend the reasons for refusal but used the appeal process to progress the amended scheme rather than submit a fresh application which would incur a fee. Whilst I note the concerns raised by the appellant regarding viability, the Procedural Guide – Planning appeals -

England(2019), published by the Planning Inspectorate, whilst acknowledging the 'Wheatcroft' principles, advises that the appeal process should not be used to evolve a scheme and that it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. Whilst amendments to a scheme might be thought to be of little significance, in some cases, even minor changes can materially alter the nature of an application and lead to possible prejudice to other interested parties.

7. I conclude that the appellant's reliance on significant material changes to the appeal documents, contrary to the above advice was unreasonable and directly caused unnecessary expense to the Council. I find that unreasonable behaviour, resulting in unnecessary expense has occurred and that a full award of costs is justified. The application for an award of costs is allowed in the terms set out below.

Costs Order

8. 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 Carden Developments Ltd shall pay to Newcastle-Under-Lyme Borough Council, the costs of the appeal proceedings described in the heading of this decision.
9. The applicant is now invited to submit to Carden Developments Ltd, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Savage

INSPECTOR