
Costs Decision

Site visit made on 11 June 2019

by J Williamson BSc (Hons), MPlan, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 August 2019

Costs application in relation to Appeal Ref: APP/W4325/W/19/3225344 18 Oak Avenue, Wirral CH49 4NL

- 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 & Mrs Oakley for a full award of costs against Wirral Metropolitan Borough Council.
 - The appeal was against the refusal of outline planning permission for erection of 5 detached dwellings.
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Decision

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

Reasons

2. Irrespective of the outcome of an appeal, Paragraph 030 of the National Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Unreasonable behaviour can relate to procedural matters (ie the appeal process) or substantive matters (ie issues related to the planning merits of the appeal).
4. Paragraph 047 of the PPG provides a list of examples of behaviour by local planning authorities that may be deemed to be unreasonable in respect of procedural matters; the list includes examples such as: lack of cooperation with the other party or parties, delay in providing information, only supplying information at appeal when it was previously requested, and not provided, at application stage.
5. Paragraph 049 of the PPG provides a list of examples of behaviour by local planning authorities that may be deemed to be unreasonable in respect of the substance of the matter under appeal, by unreasonably refusing planning permission. The examples provided include: vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by objective analysis.
6. The appellant's grounds for an award of costs relate to i) inadequate, vague and unclear reason for refusal, ii) Officers incorrectly applying the Council's own policies and iii) the Council unreasonably withholding information.

7. I concluded in the appeal decision to which this costs appeal relates that the reason for refusal provided did not state clearly and precisely what the Council considered to be unacceptable about the proposal and why it did not accord with the policies stated. As a result of this the appellant had to spend time seeking to clarify the reason for refusal.
8. I also concluded in the appeal decision to which this costs appeal relates that policy HS10 refers to development proposals behind existing dwellings of between one and 3 dwellings, and as the proposal is for 5 dwellings the policy does not apply. Consequently, the appellant has spent time unnecessarily addressing this element of the reason for refusal.
9. The appellant considers that electronic copies of neighbour representations and consultee comments should have been provided to them to allow such matters to be responded to appropriately in their appeal statement. Copies of an exchange of emails between the Council and the appellant concerning this matter show that the Council has a published list of services for which they charge. In addition, the information shows that the appellant was offered the opportunity to view the documents at the Council's offices without charge. In addition, the Council directed the appellant to the Information Commissioner's Office (ICO) should they wish to complain about the matter. It is not within the remit of this costs appeal to conclude whether the Council can legitimately charge for such services or whether the Council's procedures adhere to the regulatory guidance of the ICO.

Conclusion

10. I conclude that the reason for refusal was not clear and precise and that policy HS10 was incorrectly interpreted and applied. As a result, the appellant has had to spend time addressing these matters as part of the appeal process.
11. It is beyond the remit of this appeal to conclude on the matter regarding rights of access to information held by the Council. There is a separate channel through which the appellant can seek to address this matter. Notwithstanding this, I find that, for the reasons identified, ie inadequate, vague and unclear reason for refusal and Officers incorrectly applying the Council's own policies, unreasonable behaviour by the Council resulting in unnecessary and wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial 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 Wirral Metropolitan Borough Council shall pay to Mr & Mrs Anthony Oakley, the costs of the unnecessary time spent and the expense incurred by the appellant in the appeal proceedings, described in the heading of this decision, as a result of the unreasonable behaviour outlined.
13. The appellant is now invited to submit to Wirral Metropolitan Borough 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. If the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

J Williamson
INSPECTOR