



Costs Decision

Site visit made on 15 July 2019

by Rachael Pipkin, BA (Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th August 2019

Costs application in relation to Appeal Ref: APP/W1850/19/3225568 Balance Farm, Eywood Lane, Titley, HR5 3RU

- 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 Mrs Angela Vaughan for a full award of costs against Herefordshire Council.
 - The appeal was against the refusal of reserved matters relating to access as required by conditions 3 and 4 of outline planning permission Ref: P160581/O granted on 27 July 2016.
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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 (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 appeal followed the refusal on 28 September 2018 of an application for approval of reserved matters in respect of access in relation to an outline planning permission for five houses at Balance Farm. The reason for refusal set out in the decision states that the application has failed to demonstrate that the local highway network can accommodate the traffic impacts of the development, particularly regarding the sub-standard visibility available at the junction of Eywood Lane and the B4355.
4. The applicant made an application for an award of costs on the basis that the appeal was unnecessary as the Council's refusal, the subject of this appeal, was erroneous in law. This is on the basis that the Council refused the reserved matters application on grounds relating to the principle of development, but which were already implicit in the grant of the outline planning application.
5. The Officer's report states that in respect of the access to and from the site from Eywood Lane the Highway Authority considered these arrangements to be acceptable subject to the details and specification of the layout and construction being secured through a condition. It will be seen from my decision, which accompanies this costs decision, that I have agreed with the

Highway Authority's assessment and found no harm arising from the site access arrangements.

6. While I accept that highway safety at the junction of Eywood Lane and the B4355 is a concern for the Council and others, this was not a valid consideration in respect of the reserved matters application. It was therefore unreasonable of the Council to take this into account and refuse the application on that basis. No further evidence has been submitted by the Council in support of its decision.
7. The applicant obtained Counsel opinion with regard to the lawfulness of the decision and submitted this to the Council. I note the Council acknowledges the procedural issue in terms of the scope of matters that were considered in its refusal. However, in terms of the advice contained in paragraph 49 of the PPG, I also find that this constitutes unreasonable behaviour by the Council with respect to the substance of the matter under appeal in terms of unreasonably refusing to approve a reserved matter when the objections relate to issues that should already have been considered at the outline stage. The Council's behaviour in proceeding to defend the appeal when it has acknowledged the error, is also unreasonable.
8. The Council took steps to rectify the position and avoid an appeal having to be made by inviting the applicant to submit a fresh reserved matters application. The target date for a decision on this application was 11 March 2019 but a late request for the matter to be considered by the planning committee led to a delay, during which time the applicant submitted an appeal in respect of the first application as the time period for making an appeal had expired. The recommendation to committee was for an approval, however, following the appeal the planning committee deferred their decision awaiting the outcome of the appeal.
9. I am sympathetic to the applicant submitting an appeal on the expiration day of the period for making an appeal. With a number of weeks delay in receiving a response from the Council following her submission of Counsel opinion on the lawfulness of the first application; and no guarantee that a decision would be taken on her second application despite being told it was recommended for approval, she understandably wanted to resolve the matter. Nevertheless, I do not consider the Council's behaviour to be unreasonable in taking the second application to committee for determination, especially given local interest in the scheme. However, had the planning committee determined the application in line with the Officer's recommendation at their meeting on 10 April 2019 rather than deferring it, it may have been possible to avoid further work on the appeal. While I do not find this unreasonable behaviour on the Council's part, it is somewhat unhelpful given the circumstances around which the appeal has been made.

Conclusion

10. The refusal of the approval of reserved matters in respect of access constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal. The ongoing defence of that appeal by the Council in view of their acknowledgement of the error in terms of scope of the decision is also unreasonable behaviour.

11. While the consideration of a fresh application has shown the Council has taken steps to rectify the situation, the delays and uncertainty around this has not helped the applicant avoid making an appeal.
12. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

13. 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 Herefordshire Council shall pay to Mrs Angela Vaughan, the costs of the appeal proceedings described in the heading of this decision.
14. The applicant is now invited to submit to Herefordshire 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.

Rachael Pipkin

Inspector