



Costs Decision

Site visit made on 7 June 2019

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 29 August 2019

Costs application in relation to Appeal Ref: APP/Z4718/W/18/3217917 Land off Butt Lane, Hepworth, 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 Acumen for a full award of costs against Kirklees Metropolitan Borough Council.
 - The appeal was against the refusal to grant consent, agreement or approval to details required by a condition of a planning permission ('the reserved matters').
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Decision

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

Reasons

2. The National 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 or wasted expense in the appeal process.
3. The applicant's costs application expresses concern that the application was referred to committee; claims that the principle of the development had already been agreed on the appeal site so as to satisfy concerns relating to flood risk; and alleges that the Council unreasonably refused the application without evidence to support its position.
4. As to the first concern, any delegated power to make planning decisions can be surrendered by officers, and in this case the Council's Scheme of Delegation permits of referrals of applications to committee at the request of the local ward members. In itself the referral of the reserved matters application to the sub-committee for a decision does not constitute unreasonable behaviour.
5. As to the second issue, when granting the outline planning permission, the Council had evidently considered and addressed flood risk matters. It imposed a particular condition, No 5, that stipulated several requirements that any reserved matters submission would have to meet, such as the installation of flood resilience measures. Nevertheless in principle I consider that the particular layout of a proposed development might further give rise to flooding considerations. Flood risks would not necessarily be immaterial when considering a reserved matters submission, even if they had been addressed, and made the subject of planning conditions, when determining the principle of the development. For example, updated information might in some circumstances result in requiring more stringent resilience measures than those

sought by the outline permission. In itself, the Council's consideration of the flood risk impacts of the proposed development at the reserved matters stage was not unreasonable.

6. I turn then to whether the Council's reason for refusing the application was substantively unreasonable. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. Whilst the Council is not obliged to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
7. The information held by the Environment Agency and the Lead Local Flood Authority is often based on modelled assessments and may lack precision, and it was not necessarily unreasonable for the Council to have disagreed with it. However, the Council has provided no clear evidence supporting its reasons for so doing. The information supplied by the ward councillors and interested parties does not demonstrate that the site of the proposed dwellings has flooded in the past, nor that it is susceptible to so doing in the future. It is not clear that any of the photographs supplied, of floods and standing water, relate to the position of the proposed dwellings, and many appear to relate to a different area some 370m downstream of the appeal site. Whilst this evidence, showing the flooding of an area relatively nearby that is in Flood Zone 1, may not instil confidence in the Environment Agency's flood maps, it is far from the clear evidence required to demonstrate that the flood risks on the appeal site are unacceptable. Ultimately the Council's case amounts to no more than a bare assertion that the proposed development is unacceptable on flood risk grounds. Unsupported as it is by clear evidence, I conclude that the Council's reason for refusing the application, forming the circumstances giving rise to the appeal, was substantively unreasonable behaviour causing wasted expense warranting an award of costs against it.

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 Kirklees Metropolitan Borough Council shall pay to Acumen the costs of the appeal proceedings described in the heading of this decision.
9. The applicant is now invited to submit to Kirklees 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. In the event that 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.

Laura Renaudon

INSPECTOR