



Costs Decision

Site visit made on 30 July 2019

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th September 2019

Costs application in relation to Appeal Ref: APP/G0908/W/19/3228984 Land South of Abbey Court, High Harrington, Workington CA14 4PG

- 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 Ken Wilson for a full award of costs against Allerdale Borough Council.
 - The appeal was against the refusal of full planning permission for the erection of eleven dwellings, with details of access and associated works.
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Decision

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

Reasons

2. Paragraph 030 of 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 appellant states that the Council have acted unreasonably as they have not determined similar cases in a consistent manner; a new reason for refusal has been introduced; there has been a delay in providing information and vague, generalised or inaccurate assertions have been made about the proposals impact.
4. The appellant claims that the Council have not determined similar cases in a consistent manner referencing approved schemes on land west of Main Road; north of main Road and land east of Main Road. Each application should be determined on its own merits however, it is noted that all these sites fall within the same Urban Fringe Area of the Cumbria Landscape Classification. Nevertheless, the Council do describe the characteristics of the appeal site, along with settlement pattern and landscape effects, and then make an assessment against planning policy as well as describing in detail the interpretation of the Urban Fringe Area in regard to the site specific characteristics. I am satisfied that the Council have not acted unreasonably in this regard.
5. The appellant argues that a new reason for refusal was introduced, as the third reason for refusal was not included on a previous 2014 refusal¹. The scheme subject of this appeal is substantially different in scale to the proposal of the 2014 refusal. The Council describe in the Officers report and the statement of

¹ Local Planning Authority reference: 2/2014/0063

case the reasons for considering the effect on the Public Rights of Way to be unacceptable, and this is clear in the reasons for refusal. I do not consider the Council have introduced a new reason for refusal during the course of the appeal and therefore have not acted unreasonably.

6. The Council's Countryside and Access Officer did not raise any objections to the proposal and no comments were made with regard to the experience and enjoyment of the Public Rights of Way. The Council do not need to follow the advice of its professional officers and it has been clearly demonstrated in the evidence provided within the Officers report and the statement of case why they consider the proposal to adversely affect the experience and enjoyment of the Public Rights of Way. I am therefore satisfied that the Council have not acted unreasonably in this regard.
7. Whilst the Council is not duty bound to follow 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. In this case, the Council's Environmental Health had not raised any objections to the proposal in terms of adverse effects on living conditions of neighbouring occupiers in respect of noise or disturbance. The alleged harm to amenity has not been substantiated other than by means of a vague assertion that opening and closing of doors, vehicle headlights, car radios and other general activities would affect the peace and quiet of neighbouring occupiers. Little evidence has been put forward by the Council to support the reason for refusal in relation to noise and disturbance, and establish that the proposal would harm the living conditions of neighbouring occupiers.
8. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, the proposal should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the guidance in the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal.

Costs Order

9. 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 Allerdale Borough Council shall pay to Mr Ken Wilson the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Councils second reason for refusal.
10. The applicant is now invited to submit to the 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.

Chris Baxter

INSPECTOR