
Costs Decision

Site visit made on 16 September 2019

by C L Humphrey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th October 2019

Costs application in relation to Appeal Ref: APP/P2935/W/19/3227761 Blue House Farm, Blue House Farm Road, Netherton Colliery NE22 6BD

- 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 Rabinder Bariana for a full award of costs against Northumberland County Council.
 - The appeal was against the refusal of planning permission for 11no. detached 2 storey dwellings with associated access works and removal of trees.
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Decision

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

Reasons

2. 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 PPG sets out that awards against a local planning authority may be either procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. Examples of the type of behaviour which may give rise to a substantive award against a local planning authority are set out in the PPG. Among these, cited by the applicant, are:
 - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and
 - refusing planning permission on a planning ground capable of being dealt with by conditions.
4. The PPG states that, although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded. The applicant refers to the Council's "significant change in stance on the principle of the development from the pre-application submission and during the course of the application, and also then presenting incorrect information to the Planning Committee."

5. The Council's response to the applicant's pre-application enquiry stated that the principle of new housing development would be contrary to Local Plan policy GP1. Based on the submitted evidence it appears that, in determining the planning application, the Council took account of site-specific circumstances and the accessibility of the site to local services. In considering the appeal, I have taken a different view on whether the site constitutes a suitable location for housing with regard to the accessibility of services. Nevertheless, this is a planning judgement, as is the weight to be attached to any policy conflict. The Council's behaviour in this regard was not unreasonable.
6. The Council's pre-application response highlighted that Blue House Farm is a Grade II listed building and noted there was no "Heritage Statement or any worked up plans and proposals to comment on." Moreover, the letter clearly stated that the Council reserved judgement on the impact of the proposal on heritage assets and stressed that this would carry significant weight in the assessment of any planning application.
7. I note that, contrary to the Council's pre-application advice, the applicant did not submit a detailed Heritage Statement with the application. Therefore, the Council had limited information against which to assess the potential impact of the proposal on the significance of the heritage asset. The applicant states that comments from the Council's Building Conservation Officer were received on 7 June 2018. As the application was not determined until 22 November 2018, there appears to have been ample time for the applicant to seek to address the Council's concerns prior to this decision.
8. In reaching a decision, the Council made a planning judgement based on the submitted details, including the description of development on the application form. I have come to a different view in terms of the level of harm likely to arise from the proposal. However, I have done so with the benefit of a detailed Heritage Statement which was produced by the applicant at the appeal stage. Nevertheless, I have found the proposal would give rise to less than substantial harm and have dismissed the appeal accordingly. I find no evidence of unreasonable behaviour on the part of the Council in relation to this matter.
9. The Council's pre-application response clearly states that "this enquiry is for in principle advice only and does not benefit from any input from the Council as Highway Authority. Therefore, I cannot comment on highway arrangements." The Council's third reason for refusal states "The proposed scheme has failed to address concerns in regard to highways safety and parking provision at the site". Based on the evidence before me it appears that the Council raised several concerns about highways and parking matters in relation to the scheme. Correspondence and discussions took place but, at the time the application was determined, there were many unresolved highways related matters. I have no evidence that the Council refused planning permission on a planning ground capable of being dealt with by conditions.
10. It would appear from the submitted evidence that discussions between the Highway Authority and the applicant continued after the application was refused and, at the time of my decision on the appeal, the only outstanding matter related to parking. I have concluded that, in this case, details of parking could be secured by condition. Again, however, that is a planning judgement. Given that layout was a matter for consideration I do not consider the Council acted unreasonably in taking a different view.

11. With regard to the Council's alleged 'change in stance', pre-application advice is given without prejudice to the formal consideration of a planning application by a local planning authority. In this case I note that the pre-application response was 'in principle' advice which appears, from the evidence before me, to have been given on the basis of limited information provided by the applicant. The opportunity to 'upgrade' the enquiry for more detailed advice was offered but does not seem to have been taken up. I note the applicant's reference to a recent Costs Decision¹. However, that related to a residential extension, details of which had been provided at pre-application stage, and I note the Inspector concluded the issues raised were 'straightforward'. As such, that case does not appear to be directly comparable to the one before me. In any event, I am obliged to consider this costs application on its own merits and have done so.
12. Whilst there appears to have been some confusion in the content of the report to Planning Committee in relation to the five-year supply of deliverable housing sites, this was addressed by officers verbally prior to the Council deciding the application. The minutes of officers' responses to questions raised by Members of the Planning Committee refer to 'poor footpath links.' However, I have no evidence that officers deliberately misled Committee Members.

Conclusion

13. In conclusion, for the reasons set out above, I find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has not been demonstrated.

CL Humphrey

INSPECTOR

¹ Costs application in relation to Appeal Ref: APP/J9497/D/17/3185212