



Costs Decision

Site visit made on 16 September 2019

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2019

Costs application in relation to Appeal Ref: APP/E2340/W/19/3232922 Lower Greenhill Farm, Caravan Site, Kelbrook Road, Salterforth BB18 5TG

- 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 N Hudson for a full award of costs against Pendle Borough Council.
 - The appeal was against the refusal of planning permission for a change of use of land to site 36 holiday lodge caravans and 20 touring caravan pitches.
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Decision

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

Reasons

2. The Government's Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and that this unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The appeal development was refused planning permission against officer recommendation. This in itself is not evidence of unreasonable behaviour. Elected Members are entitled to disagree with their officers. However, they must adequately substantiate their decision.
4. The Council's first two reasons for refusal relate to the visual impact of the appeal development on the landscape and character of the area. These reasons are substantiated in the Council's appeal statement, including with reference to specific viewpoints where the Council considers there to be a harmful visual impact, and reference to policies in the development plan.
5. In my decision I have reached a different conclusion to the Council in this regard. Nevertheless, I am satisfied that it has adequately substantiated its position with regard to the first two reasons for refusal and has not behaved unreasonably in this regard.
6. The appellant's claim that the various Committees did not visit the appeal site prior to refusing planning permission does not have a significant bearing on the Council's substantiated reasons for refusal, which concern longer distance views of the site.
7. The Council's final reason for refusal concerns what it considers to be an unacceptable increase in the risk of off-site flooding caused by the appeal development.

8. This has two main grounds, firstly the difference between the peak greenfield runoff rate, calculated using the IH124 method, and the maximum discharge rate that the Earby and Salterforth Internal Drainage Board (IDB) would permit. Secondly, the photographic evidence of recent flooding in the area of the proposed detention basin on the appeal site means it may be overwhelmed by floodwater and so rendered ineffective at attenuating surface water flows from the site. The site drains into Salterforth Beck which flows through Earby and has caused severe flooding there in recent times.
9. The IDB has changed what it considers to be an acceptable discharge rate from the appeal development during the application process. In any event, as the Council's officer report notes, the IDB permitted discharge rate is not part of the planning process and is governed by separate legislation.
10. The Council has not questioned the Lead Local Flood Authority's (LLFA's) consultation response to the proposal or the methodology of the appellant's FRA, which shows that the proposed development would reduce the discharge rate to Salterforth Beck compared to the existing greenfield runoff rate. The FRA also proposes to raise the ground levels in the vicinity of the detention basin, to address the issue of water ponding there. The final details of the drainage plan are controlled by a condition attached to the accompanying grant of planning permission.
11. I have reached a different conclusion to the Council with regard to flood risk, as set out in my main decision. I am not satisfied that the Council has demonstrated that the appeal development would cause an unacceptable increase in the risk of off-site flooding and there are substantive grounds for an award of costs.
12. The appellant also claims costs on procedural grounds, that the Council deliberately concealed relevant evidence, including the report produced by an independent drainage consultant referred to in the Policy and Resources Committee update report of 19 March 2019, and the update report itself.
13. The drainage consultant's report has not been provided. However, the appellant has provided the update report, which includes the conclusion of the drainage consultant's report, which was the same as the conclusion reached by the LLFA, that the appeal development was acceptable in terms of on and off-site flood risk.
14. I note the Council's comments regarding the status of the drainage consultant's report, which they consider to be privileged. However, given its stated conclusion is said to be the same as that of the LLFA, it does not have a significant bearing on the outcome of the appeal. In this case I am not satisfied that the appellant has been significantly disadvantaged as a result.
15. No substantive evidence has been provided to demonstrate the appellant's assertion that the Council deliberately withheld the update report from the appeal process, and I note that it is available on the Council's website.
16. In my view there are no procedural grounds for an award of costs. However, the Council has not adequately substantiated its final reason for refusal. This is unreasonable behaviour and there are, therefore, substantive grounds for an award of costs, in this regard.

Conclusion

17. For the reasons given above, I find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense as described in PPG, has been demonstrated with regard to the final reason for refusal only and that a partial award of costs is therefore justified.

Costs Order

18. 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 Pendle Borough Council shall pay to Mr & Mrs N Hudson, the partial costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the Council's final reason for refusal only.
19. The applicant is now invited to submit to Pendle 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.

Andrew Parkin

INSPECTOR