

Costs Decision

Hearing Held on 11 September 2019

Site visit made on 11 September 2019

by S Hunt BA (Hons) MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 14 October 2019

Costs application in relation to Appeal Ref: APP/C2708/W/19/3224437 Tan House Holiday Park, Stirton, Skipton BD23 3LQ

- 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 Craven District Council for a full award of costs against Partingtons Holiday Centres Ltd.
 - The hearing was in connection with an appeal against the refusal of planning permission for the siting of 38 static caravans, 10 camping pods and a multiuse sports court.
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Decision

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

The submissions for Craven District Council

2. The application was submitted in writing prior to the Hearing.
3. The Council's submissions are in relation to late submission of a draft legal agreement. The application was considered by the Planning Committee on 3 separate occasions in September, November and December 2018. On 17 December 2018 the recommendation was approve with conditions to delegate approval subject to the completion of a deed to modify the Section 52 Agreement.
4. The applicant was therefore fully aware that if planning permission was granted it would be the subject of a legal agreement, whatever form that may be. The applicant failed to produce an appropriate draft legal agreement within the timescales set out in the Procedural Guide to Planning Appeals (Annexe N); at least 10 days prior to the Hearing date.
5. The applicant submitted an email regarding the draft Deed of Release on 9 September 2019, only 2 days before the Hearing. This is wholly insufficient time to enable a draft agreement to be in a ready state for execution at the Hearing. The late receipt meant that the Council's solicitor was unavailable to comment on the draft.
6. The requirement for a legal agreement is fundamental to the appeal scheme as the site lies within an area covered by an existing planning obligation (Section 52 Agreement). Without the agreement, it would be impossible to grant planning permission which would be contrary to an existing obligation.

7. The failure by the applicant to follow the appeal timetable and provide the draft Legal Agreement in a timely manner as required by the Procedural Guide amounts to unreasonable behaviour as defined by the PPG and has resulted in an Appeal which has no chance of success resulting in unnecessary cost and wasted expense by the Council.
8. As a result of the applicant's failure there is no draft agreement for either the Council or the Inspector to consider. Conditions cannot be imposed requiring the signing of a legal agreement and the requirement for the agreement is consistent with paragraph 54 of the National Planning Policy Framework.

The submissions for Partingtons Holiday Centres Ltd

9. The response was made in writing prior to the Hearing.
10. A Deed of Release has been provided to the Council and the Planning Inspectorate in advance of the hearing. The Council has confirmed that it would allow a Deed to amend the legal agreement at Section 4.5 of the Statement of Common Ground, dated 20/08/2019, and has previously executed a similar such deed at this site in recent years (2005), thus confirming that this approach is acceptable. The Deed of Variation is a simple and concise document which should not require significant time to be executed by the Council. Therefore, the submission of this document at this stage was not prejudicial or unreasonable behaviour against the Council. The Council fully anticipated receipt of this document and its submission at this stage has not introduced any new material considerations that would weigh in the overall planning balance of the case.
11. Accepting that the Procedural Guide identifies that ideally a draft would have been issued earlier in the process, in these circumstances, given the relative simplicity of the Deed, it should be readily achievable for it to be executed prior to the closing of the Hearing.
12. The Council has not been required to expend abortive time in their preparation of their appeal documentation, as it is documented that there is in principle acceptance to a Deed by the Council. Therefore the applicant has not acted unreasonably and has not caused any other party to incur unnecessary or wasted expense in the process.

Reasons

13. National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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.
14. The applicant was aware that a legal agreement would be required to enable development on the land currently restricted by the obligation dated 8th October 1973 made under Section 52 of the Town and Country Planning Act 1971. A previous planning approval for 12 holiday units from 2005 included a variation to that agreement. The recommendation to the Planning Committee in December 2018 included a late information report with an Officer recommendation of delegate approval subject to completion of a legal agreement.

15. The draft agreement, a Deed of Release, was not received 10 days prior to the opening of the Hearing as required by Annex N (N.2.4) of the Procedural Guidance. Paragraph N.2.5 of the Guidance allows for flexibility and recognises that wording may need to be changed as a result of discussion during the Hearing. If execution of an obligation is not practicable before the Hearing closes, the Inspector will agree the details for the receipt of the executed obligation at the event.
16. The applicant submitted the draft Deed of Release prior to the Hearing. The Council's solicitor was unable to consider it in time for the Hearing discussion. Nevertheless, I note that the Statement of Common Ground dated 20 August 2019 confirms that both parties accepted that the existing Section 52 Agreement restricting the use of the appeal site would require a deed of variation to amend it. The Council agreed at the Hearing that the aims of the draft agreement were acceptable in principle; it was the mechanism to achieve it that was in question and needed the input of their solicitor.
17. I therefore allowed the parties 7 days to execute the agreement, and a signed Deed of Release dated 18 September 2019 has been received within the required timescale.
18. Both parties were aware of the need for the agreement. Whilst the late submission is unfortunate, it was received in time for discussion at the Hearing. The Deed of Release is a relatively simple and short document.
19. Whilst a solicitor's input will have been required on behalf of the Council, I do not consider that this would involve unnecessary or wasted expenditure over and above what would ordinarily have been carried out for the planning application.

Conclusion

20. Unreasonable behaviour has not been demonstrated and therefore no award of costs is made.

S Hunt

Inspector