

Costs Decision

Site visit made on 21 October 2019

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2019

Costs application in relation to Appeal Ref: APP/B3438/W/19/3227971 Vacant land adjacent Railway Cottages, Cresswell Old Lane, Cresswell ST11 9RF

- 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 Staffordshire Moorlands District Council for a partial award of costs against Mr Sanders.
 - The appeal was against the refusal of planning permission for the construction of 8 houses.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, 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. The PPG states that examples of unreasonable behaviour which may result in an award of costs include 'resistance to, or lack of co-operation with the other party or parties in providing information, discussing the application or appeal'; and 'only supplying relevant information at appeal when it was requested, but not provided, at application stage'.
3. The Council is seeking a partial award of costs in respect of new evidence and information introduced in relation to reasons 3 (living conditions and character and appearance), 4 (protected species) and 5 (highways) for refusal. The Council's case is that the appellant has pursued an appeal rather than re-engage with the Council or submit a revised planning application.
4. The Procedural Guide – Planning appeals -England(2019), published by the Planning Inspectorate advises that the appeal process should not be used to evolve a scheme. Whilst the appellant is not a national house builder, he is still obliged to adhere to the advice contained within the PPG and Procedural Guide. The Council cautioned the appellant against using the appeal process to evolve a scheme prior to the submission of the appeal. However, when the appeal was made, it was requested that I make my decision on the basis of revised plans submitted with the appeal.
5. The amendments comprised an amended layout, substitution of plot types and the provision of noise bunds. The revised layout necessitated consideration of the original and the proposed amended schemes by the Council. I conclude

that the appellant's reliance on significant material changes to the appeal documents, contrary to the above advice was unreasonable and directly caused unnecessary expense to the Council.

6. Ecological surveys, which were requested by the Council prior to its determination of the application, were also submitted with the appeal to address the Council's fourth reason for refusal. The appellant raises concern regarding the timescales for a 'free' submission. However, the application was refused on 15 November 2018. It is unclear why the appellant identified 12 December 2018 as the submission date and not within 12 months from the date of the refusal, in accordance with the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits)(England) Regulations 2012 (as amended).
7. The appellant acted unreasonably in appealing a scheme which as determined could not be approved because of the lack of information supplied. The submission of the surveys through the appeal process necessitated additional work and consultation with the Staffordshire Wildlife Trust. As such, the Council incurred additional cost in responding to the additional information provided.
8. The appellant asserts that no new evidence was provided through the appeal in respect of highways and layout. I would agree that the information submitted was not overly technical and have no substantive evidence that further information was requested by the Council prior to its determination of the application. As such, I do not consider that the appellant has behaved unreasonably in relation to reason for refusal 5.
9. For the reasons given above, I find that unreasonable behaviour, resulting in unnecessary expense has occurred and that a partial award of costs, to cover the expense incurred by the applicant in contesting reasons 3 and 4 for refusal, is justified.

Conclusion

10. I therefore find that unreasonable behaviour by Mr Sanders, resulting in unnecessary and wasted expense, as described the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

11. 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 Mr Sanders shall pay to Staffordshire Moorlands District Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in arguing against the Council's refusal reasons 3 and 4.
12. The applicant is now invited to submit to Mr Sanders, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Savage

INSPECTOR