
Costs Decision

Site visit made on 28 October 2019

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th December 2019

Costs application in relation to Appeal Ref: APP/A2335/W/19/3235804 Land to side of 5 Main Road, Nether Kellet LA6 1HG

- 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 Lee Ogley (Fellside Land Developments Ltd) for a full award of costs against Lancaster City Council.
 - The appeal was against the refusal of planning permission for construction of 4 new dwellings.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. It also states that examples of unreasonable behaviour by local planning authorities include lack of co-operation with the other party. Unreasonable behaviour in the context of an application for an award of costs may be either procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).
3. The applicant considers that by refusing the application and failing to agree an extension of time in order to resolve any outstanding issues with the proposed scheme that the Council behaved unreasonably by directly causing unnecessary expense to be incurred via the appeal process. The applicant also considers that the Council also failed to adequately consider a material planning consideration (housing land supply) leading to the original application being unnecessarily refused.
4. The Council have stated that when concerns relating to the proposed scheme first arose opportunities were presented by officers to the applicant to revise the scheme with draft amendments being provided. However, the Council did not consider these amendments to be sufficient to overcome its concerns. Furthermore, it appears that the scheme subject to the appeal was submitted without any positive pre-application discussion or engagement with the Council by the applicant. In relation to the failure to adequately consider a material planning consideration, the officer's report clearly does refer to the material consideration in question. Whilst this may not have been referred to in the level of detail that the applicant would prefer, I do not consider the approach to be unreasonable.

5. In the overall planning judgement, it appears to me that having regard to the evidence before me the Council did endeavour to proactively co-operate with the applicant and that officers considered the issues relevant to the determination of the original application. The refusal of planning permission therefore does not constitute unreasonable behaviour.
6. Accordingly, I do not consider that the Council failed to co-operate with the applicant, properly evaluate the application or consider the merits of the scheme and therefore that the appeal could have been avoided.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

C Coyne

INSPECTOR