



Costs Decision

Site visit made on 6 November 2019

by W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2019

Costs application in relation to Appeal Ref: APP/N2535/W/19/3235466 Land to the east of Laughton Road, adjacent to Irwin Road, Blyton, Gainsborough, Lincolnshire

- 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 Philip Marris for a full award of costs against West Lindsey District Council.
 - The appeal was against the refusal of planning permission for an outline application for up to 9 dwellings with all matters reserved.
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Decision

1. The application is allowed in the terms set out below.

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. Paragraph 049 of the PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples include: 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; failures to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The applicant submits that the Council has acted unreasonably as they failed to produce evidence to substantiate its reason for refusal, particularly with regard to drainage; the Council's case contains vague, generalised and inaccurate assertions about the proposals impact, which are unsupported by any objective analysis; the refusal of planning permission on drainage could have been dealt with through the imposition of a condition; the Council have not determined the appeal application in a consistent manner; and, there was a failure to have regard to professional advice from Officers and Statutory Consultees.
5. I have noted the recommendation of the Council's Officer and that the applicant does acknowledge that Council Members, in making their decision, do not have to accept the recommendation of the Officer. I find that in this instance, the Officer recommendation was to grant permission for this development, and it is not unreasonable for a Committee to reach a different view. However, if a different decision is reached, the Council must clearly

demonstrate on planning grounds why the proposal is unacceptable and provide clear evidence to substantiate that reasoning. In this case, the Council exercised its planning judgement based on local knowledge and the significant amount of representations from local residents and other interested parties.

6. With regards to drainage and flood risk, I believe that clear evidence was not provided by the Council to substantiate its reason for refusal, contrary to the advice provided by Officers and Statutory Consultees. However, with regard to the location of housing and character and appearance, I find this to be more subjective, where the Council Members made a case for the contrary view. On this basis, the applicant would have still had to appeal in any event.
7. It will be seen from my Decision that I do not agree with the Council's refusal. However, I am not satisfied that the Council adequately substantiated the aspects of its reason for refusal regarding drainage and flood risk, especially in light of the professional advice received. It appears that having regard to the provisions of the development plan, national planning policy and other material considerations, the inclusion of matters of drainage and flood risk therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has been demonstrated. A partial award based on the costs incurred by the applicant in responding to the elements of the refusal reason relating to drainage and flood risk would therefore be justified.

Costs Order

9. 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 West Lindsay District Council shall pay to Mr Philip Marris the costs of the appeal proceedings described in the heading of this decision. These costs shall be limited to those incurred in the preparation and submission of the applicant's case responding to aspects of drainage and flood risk as part of the refusal reason on the Council's Decision Notice.
10. The applicant is now invited to submit to West Lindsay District 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.

W Johnson

INSPECTOR