



Costs Decision

Site visit made on 3 December 2019

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 8 January 2020

Costs application in relation to Appeal Ref: APP/Z4718/W/19/3237464 Adj 1 Spring Lane, Holmfirth HD9 2LN

- 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 Cruickshank for a full award of costs against Kirklees Metropolitan Borough Council.
 - The appeal was against the grant subject to conditions of planning permission for reserved matters application pursuant to outline permission 2016/91502 for erection of one detached dwelling.
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Decision

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

Procedural Matter

2. The Council amended the development description from 'application for single dwelling dealing with layout, scale, appearance and landscaping at land adj 1 Spring Lane, Holmfirth' to 'reserved matters application pursuant to outline permission 2016/91502 for erection of one detached dwelling.' This is also the description used by the applicant on the planning appeal form. I consider this to be a more accurate description of the proposed development and have used it in the banner heading above.

Reasons

3. Irrespective of the outcome of an appeal, Paragraph 030 of the National Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably, and that the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
4. The applicant's grounds for a full award of costs is on the basis that i) Council Officers failed to advise Council Members correctly and caused them to take erroneous and irrelevant matters into account in the determination of the application which departs from its parent outline planning permission¹; ii) a timber fence was approved as part of a previous reserved matters scheme² and that Council Members were not informed that the fence in place during the site visit was temporary; and iii) the condition which was suggested by Council Members and is the subject of the appeal is not valid as it does not meet the

¹ Ref: 2016/91502

² Ref: 2017/93648

- six tests as outlined in the National Planning Policy Framework (Framework) and the PPG, and that this was not challenged by Council Officers.
5. The Council contends that it approached the determination of the application in the proper manner, with Council Members undertaking the appropriate process and reaching an informed decision, weighing all material planning considerations. Furthermore, that it exercised its development management responsibilities and imposed a condition which stands up to scrutiny on the planning merits of the application and against the six tests stated in the Framework and the PPG.
 6. The application was for reserved matters of layout, scale, appearance and landscaping and included a change to the layout with regard to the locations of the garage and the lounge. I note the frustration of the applicant in relation to the determination of the application. However, given that I am of the opinion that boundary treatment can be considered as part of the reserved matter of landscaping and the proposed revision to the layout, I am satisfied that, in considering the planning merits of the detailed scheme, it was relevant and valid to assess and condition the boundary treatment on the appeal site as part of the application. Furthermore, I consider that there is no substantive evidence before me which demonstrates that Council Officers did not appropriately advise Council Members during the determination of the application, or that there was any impropriety on the part of the Council. Therefore, in these respects, I am unable to conclude that the Council behaved unreasonably.
 7. I recognise that a timber fence was approved as part of a previous reserved matters scheme which was determined under delegated powers and not assessed by Council Members. In addition, I note that the application which is the subject of the appeal was recommended for approval by Council Officers with a suggested condition requiring a 'boundary fence' to be provided and retained.
 8. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. It is disputed between the parties as to whether Council Members were fully aware of all of the material planning considerations, including that the fence on site was temporary. Taking into account the statements submitted, I consider that there is no conclusive evidence which confirms that Council Members were not fully aware of all of the material planning considerations, particularly that the fence on site was temporary, prior to reaching their decision. Therefore, on this basis, I am unable to conclude that the Council acted unreasonably.
 9. The PPG states that a local planning authority is at risk of an award of costs if it behaves unreasonably by imposing a condition which does not comply with the guidance in the Framework. I consider that Council Members would have been aware of the six relevant tests and that it was appropriate for them to use their own planning judgement and make their own assessment of the application. However, as outlined in my Decision, I consider that the erection of a timber fence in this location would not be out of keeping with the character and appearance of the surrounding area and would ensure that the living conditions of the occupiers of Somerton, with regard to overlooking and privacy, would be

protected. As such, the imposition of a condition requiring the boundary treatment to be a stone wall to the dimensions and details as specified, is not necessary or reasonable in all other respects. Therefore, it does not meet the six tests as outlined in the Framework and the PPG. Accordingly, I consider that this amounts to unreasonable behaviour by the Council.

10. As a direct consequence of this unreasonable behaviour, the applicant has been faced with the unnecessary expense of preparing and submitting the appeal.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

Costs Order

12. 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 Kirklees Metropolitan Borough Council shall pay to Mr Cruickshank, the costs of the appeal proceedings described in the heading of this decision.
13. The applicant is now invited to submit to Kirklees Metropolitan 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.

F Cullen

INSPECTOR