
Costs Decision

Site visit made on 12 November 2019

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 8th January 2020

Costs application in relation to Appeal Ref: APP/P2935/W/19/3235554 Hopedene, The Dene, Leadside Bank, Allendale, Northumberland NE47 9PX

- 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 & Mrs Gifford for a full award of costs against Northumberland County Council.
 - The appeal was against the refusal of the Council to grant planning permission for the variation of Condition 2 – (approved plans) pursuant to planning permission 16/03126/FUL in order to alter the design of the approved dwelling to remove the terrace and introduce new external building materials without complying with a condition attached to planning permission Ref 17/01334/VARYCO.
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Decision

1. The application for a full award of costs is allowed.

Reasons

2. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only 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. The officer report recommended approval of the amended plans, thereby varying Condition 2 of application ref 17/01334/VARYCO. However, the matter was referred to committee and it was deferred to allow information on drainage and land stability to be submitted. Following submission of the further information, the committee considered the application afresh in June 2019. Although officers again recommended approval, Members refused the amendments on grounds relating to the effect on the neighbours rather than issues for which the application was deferred.
4. I appreciate that there was no resolution at the earlier committee to approve the application, subject to the deferred matters being satisfactorily addressed. Nevertheless, the decision would have come as a surprise to the appellants, given that the original committee meeting had led them to believe that matters relating to residential amenity had been resolved to the satisfaction of the Council.
5. In this respect, it does appear unreasonable for the application to have been refused on grounds that had apparently been previously resolved. Moreover, if the appellants had understood that the application would be refused on amenity grounds then it seems unlikely that they would have gone to the

expense or delay of commissioning further work relating to land stability and drainage to inform determination.

6. However, while the Council's decision will undoubtedly have been a disappointment to the appellants, Members were entitled to exercise their planning judgement and conclude that the scheme conflicted with the development plan contrary to the professional advice of officers. As can be seen from my appeal decision, I consider the officer recommendation took too narrow a view of the likely harm to the neighbours. I agreed with the Council's decision and dismissed the appeal accordingly. Given the harm that I have found, it therefore follows that the Council's actions did not delay development which should clearly have been permitted and planning permission was not unjustifiably withheld.
7. In these circumstances, the appeal provided the appellants with the opportunity to test the decision of the Council. However, the Council has not defended the Members' decision in any detail or substantiated the reasons for refusal in the appeal process. Therefore, although I concurred with its decision, I did so by making my own assessment based on the neighbour representations and my observations during my site visit. The Council's failure to expand upon the reasons for refusal will also have given the appellants no clear focus in respect of the Council's specific concerns and therefore the particular matters that they would need to address in the appeal. On this basis, the Council's failure to adequately defend its decision in the appeal process does constitute unreasonable behaviour by the Council.

Conclusion

8. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary or wasted expense as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is 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 other enabling powers in that behalf, IT IS HEREBY ORDERED that Northumberland County Council shall pay to Mr & Mrs Gifford, the costs of the appeal proceedings described in the heading of this decision.
10. Mr & Mrs Gifford are now invited to submit to Northumberland County Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an 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.

Sarah Manchester

INSPECTOR