



Costs Decision

Site visit made on 10 December 2019

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 13 January 2020

Costs application in relation to Appeal Ref: APP/R4408/W/19/3236269 210 Carlton Road, Athersley South, Barnsley S71 2AP

- 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 and Mrs Austin for a full award of costs against Barnsley Metropolitan Borough Council.
 - The appeal was against the refusal of outline planning permission for residential development for up to 14 dwellings with detailed access.
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Decision

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

Reasons

2. Irrespective of the outcome of an appeal, Paragraph 030 of the National Planning Practice Guidance (NPPG) advises that costs may be awarded against a party who has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The application for a full award of costs is on the basis that the Local Planning Authority (LPA) behaved unreasonably by changing the description of the development proposed without the agreement of the applicants, and by including reasons for refusal which relate to reserved matters and/or which were not raised during the determination of the application, all of which required the applicants to defend an unsound planning decision.
4. The applicants state that the LPA behaved unreasonably in a procedural manner by changing the description of the development proposed from 'Outline Residential Development for up to 14 dwellings with detailed access' to 'Residential development of 14no dwellings (Outline with all matters reserved apart from means of access)' without any consultation or obtaining their agreement.
5. The applicants contend that this is contrary to guidance within the NPPG and the context of the National Planning Policy Framework (Framework), and that the change meant that the assessment of the application was undertaken as if it was a full application for a fixed number of '14no dwellings', rather than an outline application for 'up to 14 dwellings' with all matters apart from access reserved for future consideration.

6. The LPA maintains that it did not behave unreasonably in this respect as the applicants were fully aware of the change and did not raise it as an issue during the determination of the application. It goes on to state that the determination of an outline application must assess the maximum development permitted by the development sought, in this case 14 dwellings, and that as only one of the four reasons for refusal relates to the number of dwellings the other reasons would still be relevant even if the number of dwellings proposed was lower.
7. I concede that the LPA did not act in accordance with the NPPG in not obtaining the applicants' agreement to the change in the description of the development proposed. However, as stated in the Appeal Decision, even though the description stated 'up to 14 dwellings', in order to consider and determine any implications and effects of the proposal, the assessment has to be undertaken on the basis of the potential maximum number of dwellings on the application site. In this respect, I do not consider that the LPA acted unreasonably.
8. The applicants also assert that the LPA behaved unreasonably in a substantive manner by assessing matters that relate to reserved matters, such as separation distances and the provision of private outdoor amenity space, which meant that the reasons for refusal were vague, generalised and inaccurate. Furthermore, they state that three out of the four reasons for refusal were not raised during the determination of the application.
9. The LPA reiterates that it is not unreasonable for it to assess the application on the maximum number of dwellings applied for and to have regard to any plans which are submitted as part of an application and, as such, it had concerns about the layout of the scheme. In addition, it states that correspondence took place with the applicants regarding the reasons for refusal. However, it has not submitted any evidence to verify this.
10. As stated in the Appeal Decision, the LPA needs to be assured that the development proposed would be capable of being advanced at the reserved matters stage. Given that the proposed layout would not meet the LPA's relevant guidance, I consider that it was valid for the LPA to have concerns about this issue. Although I concluded in the Appeal Decision that it was difficult to substantiate the LPA's position on the living conditions of existing and future occupiers as a reason for refusal, I am of the opinion that this does not constitute unreasonable behaviour.
11. With regard to not raising some of the reasons for refusal with the applicants, from the limited evidence before me, I acknowledge that it would have been more in the spirit of Paragraph 38 of the Framework if the LPA had approached the determination of the application in a more positive way, and raised any additional concerns about the development proposed or highlighted the need for any supplementary information with the applicants during the assessment of the application. However, I cannot be certain that had additional information been provided in advance of the LPA's decision that this would have overcome the LPA's concerns and changed the outcome or avoided an appeal. Therefore, in this respect, I am unable to conclude that the LPA behaved unreasonably.
12. Taking all of the above into account, I cannot agree that the LPA behaved unreasonably in a procedural or substantive manner and, as such, there can be no question that the applicants incurred unnecessary or wasted expense in the appeal process.

Conclusion

13. Consequently, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the NPPG, has not been demonstrated. Therefore, the application for an award of costs is refused.

F Cullen

INSPECTOR