



Costs Decision

Site visit made on 7 January 2020

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2020

Costs application in relation to Appeal Ref: APP/M0655/W/19/3239427 16 Pool Lane, Lymm, Warrington WA13 9BJ

- 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 Messrs B & T Thorns of Living Smart Property Limited for a full award of costs against Warrington Borough Council.
 - The appeal was against the refusal of planning permission for the construction of 2 dwellings and associated works (re-submission of 2018/33957).
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Decision

1. The application for an award of costs 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 it failed to provide information to justify its decision and adhere to deadlines, and failed on appeal to produce evidence to substantiate its reasons for refusal. It is claimed that there is nothing within the Officer's Report on the original application to indicate that planning permission should be refused, or that the case was finely balanced; the reasons for refusal makes vague and generalised assertions about alleged impacts of the proposal, which are unsupported by any objective analysis. In respect of the fifth reason for refusal, the council has refused planning permission on a planning ground capable of being dealt with by a condition, and the council has failed to determine the appeal scheme in a consistent manner to an earlier and similar submission.
5. The Council refused the application for reasons relating to flood risk; living conditions of both future and existing occupiers, character and appearance and biodiversity. Whilst I have noted the Council Officer's recommendation in the Committee Report, the Council is not duty bound to follow the advice of its

professional officers. However, if a different decision is reached, then the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. In this case it is not entirely clear from the evidence before me surrounding the concerns raised by the Council regarding the actual harm that would occur from the development as the Council did not submit a written statement (WS) by the required deadline of 17 December 2019.

6. Whilst the Council did submit a WS on 23 December 2019, no request for an extended deadline was submitted on the basis of extraordinary circumstances, although I do note reference to staffing issues. Therefore, the WS was returned to the Council. All parties involved in an appeal have a responsibility to meet the required deadlines. I note the reasons for refusal set out in the Council's decision notice are complete, specific and relevant to the application. It also clearly states the relevant policies of the Warrington Borough Council Local Plan Core Strategy 2014. I consider, that the wording of the reasons for refusal, does not itself, represent unreasonable behaviour.
7. In the Council's response to the appellant's claim, reference is made to the previous application¹ determined by the Council, as being dealt with under delegated powers and not by Members of the Committee. Nonetheless, all planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise². Consequently, I find that the scheme has not been determined in a consistent manner. Additionally, the Council refused the application contrary to the professional and technical advice received from statutory consultees, without providing substantive evidence to the contrary. Furthermore, I note that the Council accepts that issues surrounding construction and biodiversity could have been addressed through the imposition of suitably worded conditions. I also recognise that the issues of design, character and appearance are subjective and a matter of judgement.
8. However, it can be seen from my Decision that I did not agree with the Council's decision. I consider that if the Council had paid full regard to local and national policy, the technical advice received from statutory consultees, and the characteristics of the proposed development, the site and its surroundings, then the scheme before me should clearly have been permitted and the appeal could have been avoided. I therefore find that the Council has not substantiated its reasons for refusal and has failed to demonstrate that it had due regard to local policy and other material considerations. As such, I consider that the Council has acted unreasonably which has resulted in the unnecessary expense of an appeal.

Conclusion

9. For the above reasons, I find that unreasonable behaviour by the Council, resulting in unnecessary expense, as described in the PPG has been demonstrated, and that a full award of costs is justified.

Costs Order

10. 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,

¹ 2018/33957

² Section 38(6) of the Planning and Compulsory Purchase Act 2004

and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Warrington Borough Council shall pay to Messrs B & T Thorns of Living Smart Property Limited the costs of the appeal proceedings described in the heading of this award limited to those costs incurred in dealing with this appeal.

11. The applicant is now invited to submit to the 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