



Costs Decision

Site visit made on 4 February 2020

by D Hilton-Brown BSc (Hons) CIEEM

an Inspector appointed by the Secretary of State

Decision date: 18 March 2020

Costs application in relation to Appeal Ref: APP/Y2003/W/19/3240730 Land to the Rear of Haywood House, High Street, Burringham DN17 3NQ

- 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 A and E Fowler, Ian Fowler and Company for a full award of costs against North Lincolnshire Council.
 - The appeal was against the refusal of planning permission for residential development (47 dwellings) with all matters reserved.
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Decision

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

Reasons

2. I have considered this application for costs in the light of the Government's Planning Practice Guidance¹ (PPG). This advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably, in either a procedural or substantive way, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. In this particular case, the applicant considers that the Council acted unreasonably in determination of the planning application on three counts. This is on the basis that it failed to substantiate or justify the reasoning behind its reasons for refusal. I will consider each of these issues separately.

Accessible location

4. The Council's reason for refusal was that they considered the location of the development to be remote from local services and public transport. In this case the Council's argument is quite clear, as although they considered that Burringham is a sustainable settlement, they were concerned with the level of development for a village of this size, with limited facilities and services on offer within the village.
5. As such I consider that the Council did substantiate its reasons for refusal and were not unreasonable in their approach. It can be seen from my decision in the substantive appeal, that I agreed with the Council on this matter and found that the future occupants of the proposed development would not have adequate access to shops and services.

¹ PPG "Appeals", paragraph: 028, Reference ID: 16-028-20140306; Revision date: 06 03 2014.

Effect of the proposed development within the open countryside on the character and appearance of the area

6. The Council refused the proposal on this second matter, as they judged that the development would have an urbanizing effect on the open countryside. They considered that housing in this location would alter the character of the area and have a detrimental impact on the openness of the countryside.
7. The applicant submitted a Landscape and Visual Appraisal (LVA) as part of the appeal process. Despite this, the Council contends that there would be landscape harm due to this development. They consider that while the LVA forms a technical opinion, it is still subjective and does not alleviate their concerns.
8. Consequently, I deem that the Council reasonably considered that the proposed development within the open countryside, would have a negative effect on the character and appearance of the area. I concurred with the Council on this issue and judge that they provided evidence to substantiate and justify their reason for refusal.

Provision of adequate drainage

9. The applicants submitted a detailed Flood Risk Assessment and Drainage Strategy produced by a suitably qualified drainage engineer. These concluded that there would be no risk of flooding and that an appropriate drainage strategy could be conditioned. Furthermore, the Council as Lead Local Flood Authority (LLFA) found this to be appropriate and considered that suitable conditions could be attached. These would ensure that this matter could be fully controlled at the reserved matters stage.
10. In this particular case the councillors, at Planning Committee, failed to take into account the evidence supplied by the LLFA and consultant drainage engineers. The Council provided little substantiation of their own for refusing planning permission and relied mostly on representations from residents. Little consideration was given to technical advice in the Drainage Strategy and Flood Risk Assessment.
11. I therefore consider that the Council did not submit any additional evidence to justify refusal and support the view that the drainage proposals would not be adequate. As such, on this third issue, I find that the Council failed to produce evidence to substantiate a reason for refusal, which represents unreasonable behaviour. While I consider that the applicants may not have incurred significant additional expense in countering the Council's position, additional costs were likely to be encountered and an award in these specific respects is justified.

Conclusion

12. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

13. 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 North Lincolnshire Council shall pay to A and E Fowler, Ian Fowler and company, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in arguing against the Council's requirement that they had not demonstrated that the development could provide adequate drainage.

14. The applicant is now invited to submit to the North Lincolnshire 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.

D Hilton-Brown

INSPECTOR