
Costs Decision

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2020

**Costs application in relation to Appeal Ref: APP/C4235/W/20/3245868
71 Longford Road West, North Reddish, Stockport SK6 6EU**

- 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 Mrs N Hewitt for a full award of costs against Stockport Metropolitan Borough Council.
 - The appeal was against the grant subject to conditions of planning permission for the erection of 2 no. dwellinghouses with vehicular access from Longford Road West.
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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. The applicant submits that the Council has acted unreasonably because condition 17 does not meet the tests set out in the National Planning Policy Framework (The Framework), that the Council delayed sending out the decision notice beyond the determination date which resulted in the imposition of the condition, that another application decided on the same date for residential development was approved without the same condition, that the Council indicated that it was approving the planning application without the condition in question and that attempts to establish common ground with a view to making an application to remove the condition have not been successful.
4. In response, the Council has stated that the imposition of condition 17 meets with national and local planning policy and guidance, that the application was determined in the statutory eight week timescale for minor developments and in accordance with the planning policies and guidance that were in place at the time. Whilst discussions did take place after the decision had been issued with regard to the possible submission of an application to remove condition 17, common ground could not be found. With respect to the allegation of inconsistent decision making, the other case to which the appellant refers was determined before a decision was made on the appeal case.
5. For the reasons I have set out in my appeal decision, the imposition of the condition fails to meet the tests that are set out in the Framework. Furthermore, the approach taken by the Council is at odds with the approach set out in its adopted Open Space Provision and Commuted Payments

Supplementary Planning Document 2019, and its predecessor, the Open Space Provision and Commuted Payments Supplementary Planning Guidance 2006, neither of which advocate the use of a planning condition to secure open space provision. No convincing explanation has been provided as to why such a departure from these adopted documents was considered appropriate in this instance. In these respects, therefore, the Council has acted unreasonably.

6. With regard to the procedural matters that the applicant has outlined as occurring during the course of the planning application, the Council has not disputed the applicant's timeline of events. These procedural occurrences have resulted in the applicant receiving a decision that contains a condition that they were neither anticipating or on which they had been afforded an opportunity to offer comment upon. This would have been particularly unexpected as the Council had, by its own admission, changed its long-standing approach to the open space requirements on smaller developments close to the point at which the decision notice was issued. The failure to engage with the applicant is contrary to the guidance set out in the PPG and in the Council's own adopted documents, and the need to do so was particularly pertinent in the circumstances of the case. In these respects, the Council has also acted unreasonably.
7. The explanation offered by the Council to counter the applicant's concern regarding inconsistent decision making does not tally with the copies of the decision notices that have been provided with the applicant's appeal submission, both of which are dated 13 September 2019. However, any inconsistency is likely to have occurred as a result of the Council changing its approach to open space provision on smaller sites very close to the date that these decisions were issued. I am therefore not convinced that there was an intention on the Council's part to act inconsistently, if this has occurred, or that this aspect represents unreasonable behaviour. Whilst I have found the Council's belief in the soundness of the condition to be misplaced, it is inevitable given the Council's position that it would informally advise that it would be unlikely to support any application made to remove the condition. The Council has defended its position throughout the appeal process, and therefore this too does not represent unreasonable behaviour.
8. As a result of the unreasonable behaviour that I have identified, and in particular as the condition fails to meet the tests set out in The Framework and due to the failure of the Council to adhere to the guidance set out in its own adopted planning documents and in national guidance, the appellant has been put to the unnecessary expense of lodging an appeal against the imposition of condition 17. Furthermore, had the Council engaged with the applicant and disclosed its intentions before issuing the decision notice, the concerns of the applicant are likely to have been made known and there is a possibility that any requirements with respect to the provision and maintenance of formal recreation and children's play space and facilities could have been addressed between the parties. This too could have avoided the need for the appeal.
9. I therefore find that unreasonable behaviour 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

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, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Stockport Metropolitan Borough Council shall pay to Mrs N Hewitt, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Stockport 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.

Graham Wright

INSPECTOR