



Costs Decision

Site visit made on 18 May 2020

by JP Longmuir BA (Hons) DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th June 2020

Costs application in relation to Appeal Ref: APP/W1850/W/20/3244475 Land adjacent to Amarant House, Harewood End, Harewood End, Herefordshire HR2 8JT

- 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 John Honey for a full award of costs against The County of Herefordshire District Council.
 - The appeal was against the refusal of planning permission for the erection of two cottages and garaging, construction of new vehicular access and track and associated works.
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Decision

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

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's claim has several elements. Firstly, it is suggested that the Council has not been consistent in its decision making. He says that two houses in vicinity of the site were allowed with visibility splays over highway land, that they also have shorter 'y' distances, and that the Council did not object to the visibility to the south of the appeal site which takes in highway land but took issue with that to the north. Secondly, the applicant suggests that there is sufficient land to achieve the required visibility splay in his ownership and that in the control of Highways England (HE). It is also suggested that the hedge is not within the splay line. Moreover, HE has powers over the splay under the Highways Act 1980 and, in any event a Grampian style condition could be imposed.
4. The Council suggest that the appeal site is fundamentally different to the two houses in the vicinity, in particular the accesses were existing. The proposal was the subject of a holding objection from HE. The Council did not believe that a Grampian style condition would ensure maintenance of the splay in perpetuity. They emphasise that the planning application was not determined for 2 years during which there were ongoing discussions and amendments. The rebuttal from the agent disputes the significance of the aforementioned and re-emphasises the inconsistency and use of a Grampian style condition.

5. The HE appeal statement states that the appeal site is different to the others in the vicinity. They also requested further information on the implications for the splay line.
6. The PPG advises that Local Planning Authorities are at risk of costs when not determining similar cases in a consistent manner. I have seen the other permitted housing sites in the vicinity and note the decision notices attached in the appendix to the appeal statement. However, I have not been provided with the submitted application details, the consultee responses or the case officer reports. Consequently, there is insufficient information for me to discern whether the cases are similar. The accesses may well have been existing and the circumstances may have been different.
7. The Council was in receipt of a holding objection from HE which limited the scope of their decision making. In addition, HE is responsible for the road and provides technical advice on safety, so their response was important from a decision making point of view. Furthermore, HE would have been aware of their own powers under the Highways Act 1980 and would not have made such a response if they felt able to require the ongoing maintenance of the visibility splay.
8. The PPG also states there is a risk of costs when an issue could be overcome by suitable condition(s). In dismissing the planning appeal, I found that the use of a Grampian style condition would not be appropriate, in that there was no reasonable evidence to suggest that the adjacent owner would agree to the permanent and ongoing hedge maintenance.
9. Whilst some survey information was submitted, it is apparent from the HE response that as at December 2019, this was not comprehensive to fully assess the implication of the proposal from a highway safety point of view. There is clear evidence that some of the dialogue between the parties during the 2 year determination period was on this issue. Whilst it took a long time to determine the planning application, there is no evidence to suggest that there was a lack of dialogue or co-operation from the Council or indeed HE during this time.

Conclusion

10. For the above reasons, I conclude the Council has not acted unreasonably, and the applicant has not been put to wasted time and expense in pursuing the appeal. Therefore, a full award of costs as described in the PPG is not justified.

John Longmuir

INSPECTOR