



Costs Decision

Site visit made on 22 May 2020

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th June 2020

Costs application in relation to Appeal Ref: APP/R1038/W/19/3242827 Land to the rear of 14-22 Green Lane (B6158) and 4-16 Park Avenue, Dronfield, Derbyshire S18 2LQ

- 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 Wood and Sons Developments for a full award of costs against North East Derbyshire District Council.
 - The appeal was against the refusal of planning permission for construction of 6 No detached houses with integral garage (revised scheme of 13/01146/FL)(Amended Plans) without complying with conditions attached to planning permission Ref 14/00901/FL, dated 28 January 2015.
-

Decision

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

Reasons

2. There are references in the applicant's statement to a separate planning application relating to the same issue. For the avoidance of any doubt, my decision relates only to the behaviour of the Council with regard to the application and appeal before me. References to the separate application have had no bearing on my decision.
3. The Planning Practice Guidance (PPG) makes it clear that local planning authorities are at risk of an award of costs if they have prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations. They are also at risk if they have relied on vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis or if they have failed to substantiate each reason for refusal on appeal. They may also be at risk where if they introduce fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.
4. The applicant alleges that the Council acted unreasonably insofar as the reasons for refusal were not supported by objective analysis, they did not substantiate their reasons for refusal, they prevented development that should clearly have been permitted and they introduced fresh and substantial evidence at a late stage. The Council has chosen not to provide any rebuttal to the applicant's submissions.
5. It is acknowledged that elected Members do not have to accept the professional advice and recommendation of their officers. However, if Officers'

professional or technical advice is not followed, authorities need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects.

6. I acknowledge in my decision that the junction in question was not without issues. Whether or not there would be undue risk also requires an element of judgement. However, in this case there were no objections from the Highway Authority and detailed evidence was submitted in relation to such issues as the scale and timing of any works, the limitations on the use of the access and the safety measures proposed. Much is made in the Council's evidence of the local knowledge of the Members and interested parties being more persuasive than that of the Highway Authority and officers. However, while the Committee Minutes indicate that a range of factors were considered, there is no indication of how these were balanced against the matters raised in the Officer Report and the overall context of the proposal. Local knowledge may be important, but any decisions based on this should still be clear they have had regard to all issues and be supported by evidence.
7. There are a number of elements of the Council's case that do not bear up to close scrutiny. Firstly, they state that the proposal would have a major impact on the school's vehicular access and on the school's access to the sports field. However, nowhere is this statement substantiated by any clear evidence of how these impacts would manifest themselves. It was clear that the intention is to carry out the works during school holidays. The Council's evidence does not make it clear why this approach would not address their concerns. The Council's statement also refers to the access to the school being 'virtually opposite' the site, which is not an accurate description and significantly overplays the likely risks.
8. I acknowledge that the Council highlighted the fact that the track is used by pedestrians outside school hours, which is clearly a legitimate concern. However, nowhere in the Council's evidence does it explain why the proposed safety measures would not be satisfactory to mitigate the risks involved. Neither did the Council seek to engage with any of the applicant's points in relation to the inevitable use of the track by vehicles in conjunction with the works or the fact that it can already be used by works vehicles. It is unclear to what extent these factors were considered.
9. In addition, the Council's statement contends that Green Lane was congested when permission was originally granted, and that this situation has become worse in the intervening period. No substantive evidence was submitted by the Council to corroborate these assertions. In any event, even if this were the case, the Council did not explain how the temporary use of the access by construction vehicles would unacceptably exacerbate this situation. This is particularly the case when considering the only way to access Park Avenue is by travelling along Green Lane. The Council therefore failed to demonstrate why there would be unacceptable harm in this respect or seek to engage with the applicant's evidence.
10. Much of the Council's case rests on the existence of a 'safer' access on Park Avenue. Nevertheless, this does not preclude the Council from addressing the fundamental question of whether or not use of the alternative would be unsafe in its own right. The Council's arguments in this regard were primarily based on vague and generalised assertions which were unsupported by objective

evidence. As a result, they clearly failed to substantiate their reasons for refusal. This is clear evidence of unreasonable behaviour on the Council's part.

11. There was nothing before me to suggest the original permission could not be implemented. As such, the Council's decision would not have prevented the development from taking place. Nevertheless, on the facts of the case I consider this was an application that should clearly have been granted when taking account of all material considerations. This is also evidence of unreasonable behaviour.
12. The Council's appeal statement referred to both the Dronfield Neighbourhood Plan and the emerging North East Derbyshire Local Plan. The applicant argues that as neither of these plans were referred to in the reason for refusal, it is unreasonable for them to be introduced at the appeal stage. However, the Council only referred to these documents in passing as part of the overall policy context of the appeal. They did not seek to rely on them in any way. Furthermore, even if they had been cited in support of the Council's case, the applicant would have had the opportunity to address any issues raised in their own 'Final Comments'. There was no need to do so. Accordingly, I do not see the Council's behaviour in this regard as unreasonable.
13. However, this does not alter my overall conclusion that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

14. 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 East Derbyshire District Council shall pay to Wood and Sons Developments, 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.
15. The applicant is now invited to submit to North East Derbyshire District 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.

S J Lee

INSPECTOR