
Costs Decision

Site visit made on 8 June 2020

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th July 2020

Costs application in relation to Appeal Ref: APP/E2001/W/20/3246685 15 Queens Gardens, Hornsea HU18 1AU

- 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 W York for a partial award of costs against East Riding of Yorkshire Council.
 - The appeal was against the refusal of the Council to grant outline planning permission for a new single storey dwelling on land SW of 15 Queens Gardens.
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Decision

1. The application for a partial award of costs is allowed.

Reasons

2. The Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The planning application which is the subject of the appeal was considered and refused by the Council's Planning Committee on 16 December 2019. The recommendation of the Council's planning officers was to grant permission.
4. The reasons for refusal related to two matters. The first related to the effect of the proposal on the character of the area and the second, whether the proposal would increase flood risk associated with surface water within or beyond the site.
5. The application for the award of costs is made in relation to the second reason for refusal. Council planning officers, in recommending a grant of permission, sought to impose a condition which would have required a scheme for the discharge of surface water, to incorporate a sustainable drainage system and a management and maintenance plan, to be submitted to the Council.
6. Whilst the evidence does indicate that at some points there appear to have been issues with surface water drainage within the vicinity of the site, details of the soakaway design and calculations were submitted to the Council and accepted. Neither Yorkshire Water, nor the Council's Land Drainage Team objected to the proposal subject to conditions. I consider that this information and its acceptance by the Council should have been sufficient to address the concerns of the Planning Committee on this matter.

7. The approach to condition the exact details of the surface water drainage arrangements on what was an outline scheme so that they could be refined and finalised as the proposals became more detailed, would have been entirely reasonable. Had I been minded to allow the appeal, conditions along the lines of those suggested would have been suitable to allow the proposals to proceed.
8. PPG¹ makes it clear 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. One such example cited of unreasonable behaviour is refusing planning permission on a planning ground capable of being dealt with by conditions.
9. Given my conclusions above, I therefore consider this an example of unreasonable behaviour that has resulted in unnecessary or wasted expense in the appeals process. I therefore conclude that a partial award of costs, to cover the expense incurred by the appellant in contesting the second of the Council's reasons for refusal, 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 East Riding of Yorkshire Council shall pay to Mr W York the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the second of the Council's reasons for refusal, which concerned flood risk associated with surface water within and beyond the site.
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.

T J Burnham

INSPECTOR

¹ Paragraph: 049 Reference ID: 16-049-20140306