



Costs Decision

Site visit made on 11 August 2020

by Graeme Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 September 2020

Costs application in relation to Appeal Ref: APP/E2340/W/20/3250622 land at Skipton Road, Barnoldswick BB18 6HQ

- 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 Future Habitat Ltd for a full award of costs against Pendle Borough Council.
 - The appeal was against the refusal of planning permission for outline application for residential development of 1.48ha (access only).
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Decision

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

Reasons

2. Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, costs may only 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. Applications for an award of costs may be made on procedural or substantive grounds. The Guidance is clear in setting out the circumstances in which a Council could be vulnerable to an award of costs against it. In this instance the appellant's application is made on substantive grounds.
4. The Guidance cites examples of substantive grounds on which a Council could be vulnerable to costs against it. These include if a Council prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, or refuses planning permission on grounds capable of being dealt with by condition. The Guidance also states that a Council could be vulnerable if it fails to produce evidence to substantiate a reason for refusal or relies upon vague, generalised or inaccurate assertions about a proposal's impact unsupported by objective analysis.
5. The appellant's application for an award of costs is made on the substantive grounds set out above. The Council's decision to refuse the application was made against the advice of its professional officers. Whilst the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
6. In this case, whilst the officer's recommendation was positive and there were no objections to the proposal in the consultation response from the Council's

Building Conservation Officer, the Council clearly had regard to the conclusions reached in a recent planning appeal for development of a similar nature on land which included the current appeal site¹. In addition, the Council's minutes clearly record that a site visit took place prior to consideration of the proposal by members of the Council's West Craven Committee. The two reasons for refusal clearly set out the Council's conclusions regarding the proposal and their assessment of it, whilst the Statement of Case clearly sets out the reasoning and justification for it.

7. Whilst I have reached a different conclusion to the Council in respect of the proposal's planning merits, this does not mean that the Council acted unreasonably in reaching the conclusion that they did. They have clearly set out and substantiated their reasons for reaching the conclusion that they did, and they have done so in a manner that avoided the 'vague, generalised or inaccurate assertions' that the Guidance cites as examples and which the appellant claims in support of the application.
8. Although my decision on the planning merits of the proposal is to allow the appeal and grant outline planning permission, it does not follow that the costs application should succeed on grounds that the proposal should clearly have been permitted or that it was refused on grounds capable of being dealt with by conditions. Rather, the Council's assessment of the proposal's impact on (designated and non-designated) heritage assets and landscape was a matter of planning judgement and I am satisfied that that judgement, and the reasons for it, were appropriately exercised and have been adequately set out by the Council. The Council has, I conclude, been able to satisfactorily substantiate its reasons for refusal and, in so doing, has been sufficiently robust in setting out its position.
9. As a result, it follows that I cannot agree that the Council has acted unreasonably in this case. As such, there can be no question that the applicant has been put to unnecessary or wasted expense.

Conclusion

10. I therefore find that unreasonable behaviour on substantive grounds resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated. The application for an award of costs fails as a consequence.

Graeme Robbie

INSPECTOR

¹ APP/E2340/W/18/3209573