
Costs Decision

Hearing Held on 29 September 2020

Site visit made on 10 September 2020

by D M Young JP BSc (Hons) MA MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 26 October 2020

Costs application in relation to Appeal Ref: APP/M1005/W/20/3248700 Land to the south of B600 Lower Somercotes, Somercotes, Alfreton, Derbyshire

- 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 Kellie Judson for a full award of costs against Amber Valley Borough Council and Paul Newman New Homes.
 - The hearing was in connection with an appeal against the refusal of planning permission for a residential development of 99 dwellings with associated landscaping and recreational open space.
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Decision

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

Reasons

2. The "*Planning Practice Guidance*" (the PPG) advises that costs may be awarded against a party who has behaved unreasonably and where this behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The general principle embodied within the PPG is that the parties involved should normally meet their own expenses.
3. Ms Judson's cost application is somewhat unusual as it is made against both the Council and the Appellant who it is argued should bear the cost of her land contamination witness. It is argued that specialist advice and representation would not have been necessary if the Appellant had submitted adequate information with the planning application to allow the risks posed by nearby former landfill sites to be properly understood.
4. However, as is clear from my decision, I have found that the level of information submitted with the application and the subsequent planning appeal to be more than adequate. That view was shared by the Council's professional officers and belatedly by the Council itself who withdrew their opposition to the scheme in light of the Nether Farm Judgement. There was thus no unreasonable behaviour on the part of the Appellant.
5. The Applicant claims that it was left to her to defend the reason for refusal after the Council withdrew its opposition. However, in light of the Nether Farm Judgement and the submission of the Appellant's second contaminated land report, there was clearly an opportunity for Ms Judson to take stock of her position as indeed the Council did.

6. However, unlike the Council, Ms Judson weighed all the various factors in the balance and decided to continue to oppose the scheme at appeal, employing the services of a witness in the process. These were all decisions that the Applicant took under her own volition and the Council's position in relation to the appeal is largely irrelevant in that regard. In short, Ms Judson was responsible for her own decisions and was under no compulsion to employ the services of a technical expert or to continue to oppose the scheme at appeal.
7. The Applicant makes various claims regarding the Council's handling of the second planning application. However, I do not intend to stray into matters which are clearly outside my remit. Such concerns should be taken up directly with the Council.
8. Finally, the Applicant has drawn my attention to a successful costs award in relation to the Amber Valley Rugby Club appeal. However, as the circumstances of that case were very different, it affords no precedent in this case.

Conclusion

9. Based on the foregoing, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

D. M. Young

Inspector