



Costs Decision

Site visit made on 22 September 2020

by I Jenkins BSc CEng MICE MCIWEM

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

Decision date: 30 October 2020

Costs application in relation to Appeal Ref: APP/G2435/W/20/3246116 67 Station Road, Hugglescote, LE67 2GB

- 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 T Marsden for a full award of costs against North West Leicestershire District Council.
 - The appeal was against the refusal of the Council to grant planning permission for an outline application for residential development on land at the rear of No. 67 Station Road.
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Decision

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

Reasons

2. The appellant's costs application was submitted in writing, as were the Council's response and the appellant's final comments.
3. The national *Planning Practice Guidance* (PPG) indicates that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
4. The appellant has indicated, in summary, the main reason for his costs application is that the Council failed to properly exercise its development management responsibilities by relying on two technical reasons for refusal, with reference to flood risk and highway safety, which do not stand up to scrutiny on the planning merits of the case. Independent reports had been submitted in support of the scheme and neither the Lead Local Flood Authority (LLFA) nor the Highways Authority objected to the scheme on these grounds. He considers that this has added to his costs associated with having to commission additional reports by Andrew Large Surveyors and MEC, which would otherwise have been unnecessary.
5. The PPG indicates that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of a matter under appeal. Examples of this include failure to produce evidence to substantiate each reason for refusal on appeal. Furthermore, refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead.

6. The Council's first reason for refusal indicated that, in the absence of further information, it could not be concluded that the proposal would not increase the risk of flooding elsewhere or that the scheme drainage would be appropriately managed for the lifetime of the development. However, the *Flood Risk Assessment* submitted by the appellant, identifies a drainage strategy and associated maintenance regime for the scheme. Furthermore, the LLFA considered that it would be possible to secure the provision and maintenance of a satisfactory drainage system through the imposition of conditions. Whilst the Council has provided some evidence of historic flooding problems of a relatively minor nature, which may be associated with the existing appeal site, in my judgement, it has not provided any substantive evidence to show that it had reasonable grounds for taking a decision contrary to the advice of the LLFA. Instead it has relied on vague and generalised assertions concerning potential difficulties related to the enforcement of such conditions. In my appeal decision, I have found that, subject to conditions, the effect of the proposal on flood risk would be acceptable. I consider that the Council failed to substantiate this reason for refusal and, in particular, to substantiate its view that the matter could not be dealt with by conditions. This amounts to unreasonable behaviour.

7. The Council's second reason for refusal relates to highway safety, with particular reference to the speed and volume of traffic on Station Road and visibility to enable vehicles to safely exit the site. I consider that a number of the points made by the Council in support of its reason for refusal amount to vague and generalised assertions, such as the unsupported claim of local councillors that speeds have increased since the appellant's speed survey was conducted. However, reference is also made to current visibility standards, the results of the appellant's speed survey and, a previous appeal decision Ref. APP/G2435/A/92/198027 associated with the erection of up to 5 dwellings on part of the current appeal site. It was dismissed on highway safety grounds, with reference to concerns regarding levels of visibility along Station Road. I acknowledge that the current visibility standards make reference to shorter visibility distances than were required in the previous appeal case. Nonetheless, the range of 85th percentile vehicle speeds, up to around 40 mph, appear not to have changed to any significant extent. I am satisfied that the Council has substantiated this reason for refusal. In my appeal decision, I have concluded, with reference to those factors, that the scheme would be likely to cause unacceptable harm to highway safety.

8. Having had regard to the Development Plan, national policy and other material considerations, I have concluded in my appeal decision that the likely impact on highway safety would justify planning permission being withheld in this case. It follows that the Council has not prevented or delayed development which should clearly be permitted, having regard to its accordance with the Development plan, national policy and other material consideration. Therefore, I consider that a full award of costs would not be justified. However, unreasonable behaviour has been demonstrated in relation to the Council's first reason for refusal, which led to the appellant commissioning additional work that would not otherwise have been necessary.

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified, limited to those costs incurred by the appellant in responding at appeal to the Council's first reason for refusal.

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 North West Leicestershire District Council shall pay to Mr T Marsden, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding at appeal to the Council's first reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to North West Leicestershire 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.

I Jenkins

INSPECTOR