



Costs Decision

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th November 2020

**Costs application in relation to Appeal Ref: APP/D2510/W/20/3256348
The Meadows, 9 Main Road, Toynton All Saints, Spilsby PE23 5AE**

- 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 Ray Thompson for a full award of costs against East Lindsey District Council.
 - The appeal was against the grant subject to conditions of reserved matters consent for detailed particulars relating to the scale, appearance, landscaping and layout of 7 no. detached houses with associated garages and internal roadway (outline permission ref no. S/185/1454/16 for the erection of residential development (with means of access to be considered)), granted on appeal on 29 September 2017.
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Decision

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

Reasons

1. The Planning Practice Guidance (PPG) 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 expense in the appeal process.
2. The PPG states that the sort of unreasonable behaviour on the part of the local planning authority which might give rise to a substantive award of costs includes *'imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions and obligations'*.
3. I have concluded in my consideration of the associated planning appeal that condition Nos 2 and 7 of reserved matters consent S/185/1454/16, had they been necessary, would have needed to have been imposed at outline stage as the PPG clearly states *that 'conditions relating to anything other than the matters to be reserved can only be imposed when outline planning permission is granted'*. The local planning authority has not reasonably had regard to the PPG in imposing the aforementioned conditions at reserved matters consent stage and to this extent the appellant has been put to wasted time and expense in pursuing the appeal.

4. In respect of condition No 6 of reserved matters consent S/185/1454/16, I have concluded that this did relate to the landscaping reserved matter as defined in both the PPG and the Town and Country Planning (Development Management Procedure) (England) Order 2015. Whilst I have had to delete such a condition and then re-impose it with a variation, this is on the basis that the evidence indicates that development has commenced on the site. I have concluded that it is still necessary that the acoustic fence is erected at an early stage and I have therefore imposed a condition requiring it to be erected within 2 months of the date of the appeal decision.
5. The basis of the appellant's appeal was that condition No 6 should be deleted as it did not meet the tests as laid out in paragraph 55 of the National Planning Policy Framework (the Framework). I have found that such a condition, albeit deleted and an almost identical one imposed but with a different timing for implementation, did essentially meet all of the planning condition tests in the Framework. Furthermore, I have concluded that the provision of an acoustic fence did relate to the 'landscaping' reserved matter. In this context, I do not consider that the Council displayed unreasonable behaviour which resulted in the appellant wasting time and expense in pursuing the appeal.

Conclusion

6. For the above reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in part. Therefore, the application for an award of costs is partially allowed.

Costs Order

7. 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 Lindsey District Council shall pay to Mr Ray Thompson, the costs of the appeal proceedings limited to those costs incurred in respect of preparing for and responding to matters relating to condition Nos 2 and 7 of reserved matters consent S/185/00546/20, such costs to be assessed in the Senior Courts Costs Centre if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
8. Mr Ray Thompson is now invited to submit to East Lindsey 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.

D Hartley

INSPECTOR