



Costs Decision

Site visit made on 7 December 2020

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 17 December 2020

Costs application in relation to Appeal Ref: APP/W0734/W/20/3257806 1 Brindlewoods, Middlesbrough TS8 9EE

- 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 Lee Spensley (c/o Wynyard Motor Company) for a full award of costs against Middlesbrough Borough Council.
 - The appeal was against the refusal of planning permission for the erection of a 2.5 storey split-level dwelling with attached triple garage with guest suite over.
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Decision

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

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. This application for an award of costs is made on 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 and provides 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 fails to produce evidence to substantiate each reason for refusal on appeal and not determining similar cases in a consistent manner.
4. The application was refused on a single ground, contrary to the recommendation of the Council's officers. While the Council is not duty bound to follow the advice and recommendations of its 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.
5. In this instance, the Council have failed to do so. There was no Statement of Case submitted by the Council to substantiate the sole reason for refusal upon which the Council's decision rested. Instead, the Council have relied upon the officer's report to the Planning and Development Committee to support the decision to refuse the application. However, the officer report recommended that the application be approved. Furthermore, the published minutes of the Committee's consideration of the proposal do not fully reflect the full nature of

the refusal reason or provide a clear link between the original officer report and recommendation and the detailed reason for refusal.

6. Had the Council submitted a Statement of Case to set out the basis upon which the refusal reason was reached it might have been possible to more clearly establish a reasoned link between the speaker objecting to the proposal as recorded in the committee minutes and the conclusion reached by the Committee set out in the refusal reason. Given the balance described between those development plans policies supportive of the proposal and those which are not, and the material considerations arising from the appeal site's reasonably length recent planning history, the absence of detailed substantiation or justification is critical to the Council's rebuttal of the application for an award of costs in this respect.
7. Thus, for the reasons I have set out, by not fully or robustly setting out the reasoning for their decision at appeal in their Statement of Case, and relying instead upon a report recommending approval, I conclude that the Council have acted unreasonably. They have not provided evidence to substantiate the reason for refusal and, without that, have not demonstrated that they have not prevented or delayed development that should clearly have been permitted when having regard to the development plan as a whole, national planning policy and other material considerations. To then seek to do so, briefly, as part of a costs rebuttal underscores the Council's unreasonable behaviour and approach to defending the refusal reason. The appellant has, in the case of this unreasonable behaviour, thereby incurred unnecessary expense and the application for a full award of costs is therefore justified.

Costs Order

8. 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 Middlesbrough Borough Council shall pay to Mr Lee Spensley (c/o Wynyard Motor Company) the costs of the appeal proceedings described in the heading of this decision.
9. The applicant is now invited to submit to Middlesbrough Borough 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.

Graeme Robbie

INSPECTOR