

Costs Decision

Site visit made on 22 September 2020

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2020

Costs application in relation to Appeal Ref: APP/G2815/W/20/3254894 Land off Nicholas Road, Irthlingborough NN9 5QT

- 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 Fermyn Woods Estate for a full award of costs against East Northants District Council.
 - The appeal was against the refusal of outline planning permission for a residential development with public open space and associated infrastructure; means of access from Nicholas Road.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may 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. Paragraph 049 of the PPG states that examples of unreasonable behaviour by local planning authorities include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead; and failure to produce evidence to substantiate each reason for refusal on appeal.
4. The sole reason for which the Council refused planning permission was the effect of the proposed development on highway safety at the Hayway – High Street junction a short distance from the site. At the time the Council's Planning Committee made its decision, the applicant had drawn up with the County Council (as Highway Authority) two alternative schemes of mitigation to be secured by a planning obligation, and had agreed that one scheme would be implemented before the proposed dwellings could be occupied. Although the Highway Authority had initially objected to the proposal, on the basis of the proposed mitigation its objection was withdrawn in late 2019.
5. The officer recommendation to the Committee on 11 March 2020 was that planning permission should be granted if a satisfactory s106 agreement could be completed by 24 April 2020. The Committee however considered that the proposed mitigation was not sufficiently detailed or costed for it to be satisfied

that there would not be a severe impact on the safety of the highway network, and planning permission was refused.

6. For reasons set out in my main decision, I found that the proposed highway mitigation would adequately address the reason for which the Council refused planning permission. The Committee was entitled to disagree with the view of the Highway Authority and the recommendation of the Council's officers, and this is not in itself an indication that the Council acted unreasonably. However, the proposed mitigation was in front of the Committee at the time it reached its decision, along with a draft planning obligation which would secure the necessary highway works before the proposed development could be occupied.
7. The appellant submitted with their appeal statement more detailed costings for both proposed mitigation options, along with information that carrying out the mitigation would not adversely affect the viability of the development. Given my conclusion in respect of the original decision, this should not have been necessary. Even so, the Council maintained in its appeal statement that the detailed highway safety mitigation scheme would be required to make the entire development acceptable, and that a lack of detailed costings did not offer any certainty that the proposed mitigation is acceptable or deliverable. No adequate justification was provided as to why such a level of detail would be required, particularly as the Highway Authority had long accepted that the proposed mitigation would make the development acceptable, and the draft s106 agreement provided for the scheme to be delivered before occupation.
8. Taking these points together, I consider that that the Council acted unreasonably in preventing development in the face of a planning obligation which would enable it to go ahead, and it did not adequately substantiate this decision at appeal stage. This led directly to unnecessary expense for the applicant in preparing additional information in respect of costs and viability, and submitting the appeal. The Council's actions have meant that the appellant has incurred unnecessary expense and an award of costs is justified.

9. Conclusion

10. For the reasons set out above I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is therefore justified.

11. Costs Order

12. 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 Northants District Council shall pay to Fermyn Woods Estate, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to East Northants 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.

M Cryan

Inspector