The Planning Inspectorate

Costs Decisions

Site visit made on 25 January 2021

by Graeme Robbie BA(Hons) BPl MRTPI

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

Decision date: 4 February 2021

Appeal A
Costs application in relation to Appeal Ref: APP/G2713/W/20/3261207
Three Tuns Garage, Brentwood House, Sandhutton YO7 4RW

- 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 Craig Smith (Moorside Developments) for a full award of costs against Hambleton District Council.
- The appeal was against the refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted for outline application for 5 dwellings and associated infrastructure all matters except access are reserved without complying with a condition attached to planning permission Ref 17/01247/OUT, dated 18 October 2017.

Appeal B
Costs application in relation to Appeal Ref: APP/G2713/W/20/3261208
Three Tuns Garage Vehicle Repair and Workshop, Brentwood House, Sandhutton YO7 4RW

- 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 Craig Smith (Moorside Developments) for a full award of costs against Hambleton District Council.
- The appeal was against the refusal grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted for application for approval of reserved matters (considering appearance, landscaping, layout and scale) following outline approval 17/01247/OUT for the construction of 5no dwellings and associated infrastructure (amended site plan and dwelling details submitted) without complying with a condition attached to planning permission Ref 19/00925/REM, dated 11 October 2019.

Decisions

Appeal A

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

Appeal B

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

Reasons

3. Identical applications for an award of costs have been made in respect of both Appeal A and Appeal B. As the grounds of the applications and the issues

raised are identical, I have considered the matters 'as one' but for clarity have referred to the decision for each appeal individually.

4. The Planning Practice Guidance advises 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. Applications for an award of costs may be made on procedural or 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. This application for an award of costs is made on substantive grounds.

5. The Guidance cites 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 not determining similar cases in a consistent manner.

6. The Council were clear in their refusal reason that matters of highway safety were not in dispute, nor have they sought to subsequently advance an argument that that should be the case. Nor were the Council incorrect to take the approach that they did in terms of the access point into the previous use of the site having granted permission, which was subsequently implemented, that that access should no longer exist.

7. Whilst I have reached a different conclusion to that reached by the Council with regard to the effect of the proposals set out in appeals A and B on character and appearance, it was not unreasonable of the Council to consider the effect of the proposed variations to the outline and reserved matters approvals in these respects. There may or may not have been a hedge at the front of the appeal site, but the approved scheme gave the expectation that one would be planted. There would in any event still be a hedge around the perimeter of plot 5, albeit in a different form and with a different pattern of openings than previously proposed and I am satisfied that it would be no less a positive contributor to the character and appearance of the completed development and the surrounding area than that which was previously approved. It was therefore not unreasonable of the Council to consider the effect of the proposal on the future appearance of the development upon completion or to reach the conclusion that they did. However, for the reasons I have set out, I disagree with the Council in this respect.

8. It is stated that it was a conscious decision to commence works prior to seeking the relevant permissions. Whatever the circumstances and reasons for that, such a course of action inevitably runs the risk of unfavourable consequences and provides weight to the old adage that such an approach is adopted at your own risk. Once committed to that course of action I can understand the appellant's frustration that the Council did not then enter further discussions regarding other possible alternatives, but I do not consider the Council's failure to do so to be unreasonable.

9. I have no evidence before me that the Council did not determine the applications within the appropriate times and note that the appeals were not lodged on the basis of failure to determine within the appropriate timescales. I do not agree that the Council's handling of the matter constituted unreasonable behaviour in the light of the Government's approach to the role that planning

should make in the national response to COVID, or in the more general terms set out in the Guidance.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated in respect of either Appeal A or Appeal B.

Graeme Robbie

INSPECTOR