

Costs Decision

Site visit made on 19 January 2021

by Elaine Worthington BA (Hons) MTP MUED MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 February 2021

Costs application in relation to Appeal Ref: APP/P2935/W/20/325779 Land to the south west of South Farm, Kirkheaton

- 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 Ms Rebecca Linkleter for a full award of costs against Northumberland County Council.
 - The appeal was against the refusal of outline planning permission for the erection of a single dwelling house. All matters except access are reserved.
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Decision

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

Reasons

2. The National Planning Guidance (the Guidance) advises that where a party has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
3. The appellant refers to unreasonable behaviour on the Council's part in relation to both a procedural context (relating to the appeal process) and a substantive context (relating to the planning merits of the appeal), but cites in particular a lack of consistency in decision making.
4. The Guidance indicates that local authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example by unreasonably refusing planning applications. It gives examples of the types of behaviour that may give rise to a substantive award of costs against a local planning authority. These include not determining similar cases in a consistent manner.
5. A dwelling was permitted by the Council in 2017¹ on a site to the south west of the appeal site to replace a dilapidated barn. That permission is referred to by the appellant in the Design and Access Statement/Heritage Statement which accompanied the planning application and is cited throughout the appeal. I appreciate that there are some differences between that scheme and the appeal proposal, in terms of their location in the village and since the appeal proposal does not include the removal and replacement of any buildings. Nevertheless, the Council's approach to the principle of development outside the settlement boundary in these two cases differs greatly.

¹ 17/00346/OUT

6. As set out in my Appeal Decision, in granting outline permission for the nearby dwelling in 2017, the Council concluded that a common view would be that the site forms part of the village and that the settlement boundary does not take into account new dwellings or the remaining historic built form of the village. The Council also found that the position of that site on the edge of the aged settlement boundary should not carry significant weight against the principle of development since the development would not extent beyond the built form of the village or act as a catalyst to increase the size of the settlement into the open countryside. The appeal site is located much nearer to the main extent of the village and the settlement boundary than that site. Yet the appeal proposal was refused due to its location outside the settlement boundary.
7. In order to justify its position, the Council refers to changes to local and national planning policy since that decision in 2017, but no details to explain these have been provided to support the planning appeal. In its response to the costs claim the Council indicates that the 2017 decision was taken at a time when the Council was looking to pursue a Core Strategy with ambitious housing targets and could only demonstrate a 5 year housing land supply of 6.1 years. I understand that the Core Strategy was subsequently withdrawn and the Council can now demonstrate a supply of some 10.9 years. Even so, in both instances the Council could comfortably demonstrate a 5 year supply of housing sites and had emerging Plans of limited weight. As such, these matters do not explain the change in approach to the settlement boundary.
8. There are also concerns of consistency in approach in relation to heritage assets. The appellant indicates that the setting of the nearby grade II* listed building at Kirkheaton Manor was not considered when planning permission was granted for the adjacent development on the other side other access track from the appeal site. Here, I understand that the former stable buildings/cart sheds associated with the listed building were permitted to be re-developed for two dwellings. The appellant indicates that there were no comments from the BCO with regards to that application. The Council does not dispute these matters and has provided no alternative evidence or clarification.
9. This being so, the Council's refusal of the appeal scheme, on a site with no buildings or demonstrable direct historic or functional link to Kirkheaton Hall, due to its impact on the setting of that listed building seems somewhat illogical. It is directly at odds with the Council's consideration of the adjacent site which relates more directly to the listed building and where planning permission for two dwellings appears to have been granted in the absence of any comments from the Council's Building Conservation Officer (BCO) or consideration of the listing building or its setting.
10. Although each planning application and appeal must be considered on its own merits, and appreciating that there are differences between the appeal proposal and the nearby developments cited, they are nevertheless similar. As such, I find that the Council has not determined similar cases in a consistent manner both in relation to the settlement boundary and in relation to the assessment of impact on heritage assets. This is unreasonable behaviour.
11. Another example of the types of behaviour that may give rise to a substantive award of costs against a local planning authority detailed in the Guidance is the failure to produce evidence to substantiate each reason for refusal on appeal, and the use of vague, generalised or inaccurate assertions about a proposal's

impact which are unsupported by objective analysis. The Guidance sets out that the aim of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add development costs through avoidable delay.

12. Although I do not regard the Council's consideration of the village as a non-designated village in this case to be unreasonable in itself, the BCO advises that being associated with Kirkheaton Manor and having mediaeval origins, Kirkheaton is a small estate village. The appellant disputes this and as set out in my Appeal Decision I have found that the Council's view is without basis and is therefore inaccurate. I have seen no evidence to demonstrate that Kirkheaton is or was an estate village or that Kirkheaton Manor has ever been a manorhouse in this sense. The Council has provided no further explanation on this point as part of its defence of the appeal or the costs claim.
13. In my view, the Council's consideration of the appeal proposal's effect on the village as a non-designated asset and on the setting of Kirkheaton Manor and the significance of those heritage assets is based on this misconception. It leads the Council to misinterpret the appeal site's role as part of the historic layout of the village and its contribution to rural character. It also means undue importance is given to the views from the listed building across the appeal site of what the Council describes as the rural hinterland. These views in fact take in a former quarry rather than estate land associated with a manorhouse. Thus, these reasons for refusal are based on inaccurate assertions about the proposal's impact and do not stand up to scrutiny.
14. The Council refers to its pre-application advice service and suggests it would have been unfavourable and avoided the need for the planning application, which in turn would have avoided the need for the appeal. However, whether or not a proposal is subject to pre-application advice, does not alter the requirement for the Council to determine planning applications reasonably.
15. The appellant raises a number of other points relating to the Council's handling of the planning application. These include: the timing of the site visit; the determination of the application under delegated powers rather than at planning committee; the lateness of the comments from the BCO; the Council's refusal of the scheme in outline in the absence of any details regarding scale, location and landscaping; and its approach to the appellant's circumstances and the support for the proposal in the local community. However, it is not evident to me that it is these matters that led the Council to unreasonably refuse the appeal scheme.
16. Nevertheless, I consider that the Council has not determined similar cases in a consistent manner, and has relied on inaccurate assertions about the proposal's impact which are unsupported by any objective analysis. Consequently, I find the Council's behaviour to have been unreasonable. As set out in my Appeal Decision, whilst I have found the proposal to be contrary to the development plan, I have found the proposal to be acceptable overall taking account of national policy and other material considerations and have allowed the appeal. This being so, the Council's unreasonable behaviour has resulted in the appellant being put to unnecessary expense in submitting and pursuing this appeal in its entirety, and I therefore conclude that a full award of costs is justified.

Costs Order

17. 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 Northumberland County Council shall pay to Ms Rebecca Linkleter, the costs of the appeal proceedings such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
18. The applicant is now invited to submit to Northumberland County 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.

Elaine Worthington

INSPECTOR