
Costs Decision

Site visit made on 1 February 2021

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th February 2021

Costs application in relation to Appeal Ref: APP/C2708/W/20/3262085 Fairmount, Starkey Lane, Farnhill, Keighley BD20 9AW

- 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 Elliott Exley for a full award of costs against Craven District Council.
 - The appeal was against the refusal of the Council to grant planning permission for the demolition of fairmount and the construction of two houses both with parking and a garage.
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Decision

1. The application for a full award of costs is allowed.

Reasons

2. The Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal and it is in relation to these matters that a claim for costs is pursued. As identified by PPG¹, examples of unreasonable behaviour include:
 - Making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
 - 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.
4. The application was refused by the Council's Planning Committee contrary to Officer advice which recommended approval for the scheme. Whilst it is not uncommon nor unreasonable for members to come to a different conclusion, such a position should be clearly supported, justified, and documented.
5. The committee minutes are very limited in detail. They suggest that members had concern in relation to overdevelopment, the privacy and amenity of neighbouring dwellings and harm to the Farnhill Conservation Area but very limited additional detail is provided.

¹ Paragraph: 049 Reference ID: 16-049-20140306

6. The appeal to which this costs application relates followed the refusal of an earlier application and subsequent appeal dismissal at the site (Ref: APP/C2708/W/19/3229554). The evidence indicates that the application subject to the current appeal reduced the number of dwellings and importantly, carefully took into account the grounds on which the previous Inspector dismissed that appeal and sought to address them. As can be seen from my decision letter, I consider that these concerns were appropriately addressed. However, there is no evidence to suggest that the committee explored whether these earlier concerns had been addressed or considered any resultant impact this may have on their decision.
7. In relation to concern about harm to the Farnhill Conservation Area (the Conservation Area), the Heritage Advice² to the Council concluded that the proposal would be generally acceptable. Neither the minutes of the meeting nor the appeal statement of the Council make a clear case that the impact would be anything otherwise. The conclusions of the Council on this matter should have been supported with robust analysis and clear justification.
8. The reason for refusal alleges that the proposal would result in an adverse impact on the privacy and amenity of neighbouring dwellings. However, problematically, neither the refusal reason nor the Council's statement make it clear to which properties the concern relates or what the specific harm would be.

Conclusion

9. I therefore conclude that the Council have made vague and generalised assertions about the impact of the proposal which they have failed to support with any objective analysis and that the Council has prevented and delayed development which should clearly be permitted.
10. PPG makes it clear that Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. I therefore find unreasonable behaviour that has resulted in unnecessary and wasted expense in the appeals process. A full award of costs is subsequently justified.

Costs Order

11. 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 Craven District Council shall pay to Mr Elliott Exley the costs of the appeal proceedings described in the heading of this decision.
12. The applicant is now invited to submit to the 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.

T J Burnham

INSPECTOR

² Heritage Advice: Fairmount 24.3.20 by John Hinchcliffe