



Costs Decision

Site visit made on 25 January 2021

by Graeme Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2021

Costs application in relation to Appeal Ref: APP/G2713/W/20/3261770 Ingleby Arncliffe Church of England VC Primary School, High Street, Ingleby Arncliffe DL6 3NA

- 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 York Diocesan Board of Education for a full award of costs against Hambleton District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for outline planning permission for (some matters reserved) the demolition of existing school and construction of four dwellings and access as amended by email received by Hambleton District Council on the 26 November 2019 without complying with a condition attached to planning permission Ref 19/01448/OUT, dated 13 January 2020.
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Decision

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

Reasons

2. Two separate appeals¹ against conditions imposed on an outline planning permission² at the appeal site have been submitted by the appellant. This application for an award of costs is made expressly and solely in relation to the appeal against condition 11 of the outline planning permission.
3. The Planning Practice Guidance (the 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.
4. In this instance, the application for an award of costs is made on both procedural and substantive grounds, albeit in a brief and concise manner. The Council have not sought to rebut the appellant's application for an award of costs.
5. A Council's failure to determine an application within the prescribed time period does not necessarily amount to unreasonable behaviour. The Guidance advises that where it is clear to a local planning authority that it will fail to determine an application within the time limits, it should give the appellant a proper

¹ APP/G2713/W/20/3261769 and APP/G2713/W/20/3261770

² LPA Ref No: 19/01448/OUT

explanation. In appeals against non-determination, the reasons for not reaching a decision should be set out and reasons explained why permission would not have been granted.

6. I have no evidence before me to indicate that the Council have explained to the appellant the reasons for their failure to determine the application within the prescribed time limit, either prior to the submission of the appeal against non-determination or within their appeal submissions. However, the Council's failure to determine the application within the prescribed time limit does not amount to unreasonable behaviour in this instance. As the appellant's appeal asserts that the disputed condition was unnecessary, unreasonable and imprecise an appeal would have been the likely outcome in any event, whether or not the Council had determined the application in an appropriately timely matter.
7. The Council's Statement of Case explains, if somewhat belatedly given the failure to determine the application, why permission would not have been granted in respect of the disputed condition. Whilst I do not agree with the Council in this respect, as my decision in regard to the planning merits sets out, I do not consider that their failure to determine the application amounts to unreasonable behaviour on procedural grounds.
8. However, the Council have not fully or adequately substantiated the justification or basis in planning terms for the imposition of the disputed condition. As my decision on the planning merits sets out, I do not consider the approach adopted by the Council to be grounded in sufficient precision, or that it has been adequately demonstrated that it is necessary or reasonably related to the development proposed, given the range of the reserved matters that remain outstanding. Thus, I conclude that the Council have acted unreasonably and, in so doing, the appellant has incurred unnecessary costs in pursuing the appeal, and the application for an award of costs succeeds on substantive grounds.

Costs Order

9. 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 the Hambleton District Council shall pay to York Diocesan Board of Education, the costs of the appeal proceedings in relation to the disputed condition described in the heading of this decision.
10. The applicant is now invited to submit to the Hambleton 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. 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