



Costs Decision

Site visit made on 23 November 2020

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 8 March 2021

**Costs application in relation to Appeal Ref: APP/X1355/W/20/3255287
Land to West of Cemetery, Kitswell Road, Lanchester
Easting: 415907 Northing: 548022**

- 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 Jordan Bell for a full or partial award of costs against Durham County Council.
 - The appeal was against the refusal of planning permission for the erection of 3 No timber cabins for holiday let purposes.
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Decision

1. The application for a full or partial award of costs is refused.

Reasons

2. The National Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, 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 process¹.
3. The Guidance confirms that although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded².
4. In relation to procedural matters, the applicant contends that the Council failed to adhere to deadlines; did not agree to common ground to save time at the appeal; and introduced fresh evidence at a late stage in the process.
5. The Council did not submit an Appeal Statement by the procedural deadline. However, there is no requirement for the Council to submit a statement if it considers that its delegated report is sufficient to defend its decision. Therefore, this does not constitute unreasonable behaviour by the Council.
6. In the written representations appeal procedure, the Council is under no obligation to agree matters of common ground. I note the Council's lack of dialogue and engagement with the applicant between the refusal of the application and the submission of the appeal and I recognise his attempts to work with the Council and avoid an appeal. Nevertheless, even if the Council had continued the initial dialogue regarding the findings of the 'Preliminary

¹ National Planning Practice Guidance, Paragraph: 030 Reference ID: 16-030-20140306.

² National Planning Practice Guidance, Paragraph: 033 Reference ID: 16-033-20140306.

Assessment of Trees' by Barnes Associates Ltd³ (the Barnes report), I cannot be certain that the concerns about the proposal would have been resolved and the appeal avoided. Therefore, in this respect, I am unable to conclude that the Council behaved unreasonably.

7. In responding to a request for comments on the adoption of the County Durham Plan 2020 (the CDP) and the implications of this for the appeal, the Council stated what it considered to be the most relevant policies and assessed the appeal proposal against them. Whilst I consider the response expanded on the reasons for refusal, a point which I return to below, I consider that its content did not represent a late statement of case and the Council did not act unreasonably in this respect.
8. The inconsistency in the Council's submissions in its assessment of the woodland is noted. However, it seems to me that this change is a result of the Council assessing the woodland against the specific wording of Policy 39 of the CDP, rather than a complete change in opinion or the introduction of new evidence to undermine the applicant's case. Therefore, although the applicant has had to address this in the appeal process, in my judgement, it does not denote unreasonable behaviour on the Council's part.
9. However, in its response, the Council also cited conflict with Policy 21 of the CDP – Delivering Sustainable Transport. This issue was not raised within the Council's delegated report or decision notice. Reference to this policy by the Council resulted in the applicant having to rebut what is essentially an additional reason for refusal at appeal. I consider that the Council acted unreasonably in this regard.
10. In relation to substantive matters, the applicant asserts that the Council failed to produce evidence to substantiate its reason for refusal on appeal; provided vague, generalised assertions about the proposal's impact, which were unsupported by any objective analysis; and refused planning permission on a planning ground capable of being dealt with by suitable conditions that would have enabled the proposed development to go ahead.
11. I am cognisant that no specific evidence has been provided by the Council to substantiate its reason for refusal in relation to its concerns about the susceptibility of the woodland to windthrow. Nonetheless, the Council's comments were based on professional advice from its specialist officers, who have experience with the issue of windthrow. Furthermore, it appears that no robust evidence was submitted by the applicant during the determination of the application which categorically disproved this opinion.
12. As such, the Council's officers were justified in exercising their professional judgement at that time. Given the historically unmanaged nature of the woodland and the context of the appeal site, it was entirely reasonable for the Council to have concerns about the potential adverse effects of the proposal and these were adequately articulated in its officer report.
13. As outlined in my Appeal Decision, having regard to the findings of the Barnes report, I am persuaded that the woodland is not highly susceptible to windthrow and the creation of the coupes has not significantly increased any risk. Nevertheless, nowhere in the Barnes report does it conclude that the trees

³ Preliminary Assessment of Trees at Low Meadow Farm, Lanchester, County Durham DH7 0RE, Barnes Associates Ltd, dated 17 May 2020.

within the appeal site are not at all susceptible to windthrow and it also raises issues regarding the health and condition of the trees. On this basis, I am not convinced that the Council's assertions about the proposal's impact were vague, generalised or so without foundation as to represent unreasonable behaviour.

14. I accept that it is common for the production and implementation of a woodland management plan (a WMP) to be secured by condition(s) and I recognise the cost implication to the applicant of providing a WMP as part of an application. I am also aware that the Council did not specifically request the submission of a WMP prior to the determination of the application or state that it would be required as part of any resubmission and/or future application.
15. Nonetheless, as stated in my Appeal Decision, as the provision of adequate screening is at the heart of whether the proposal would be acceptable in planning terms, I am of the opinion that it would not be appropriate to leave this matter to be dealt with by condition(s). Even though general information regarding the future management of the woodland has been provided, in my judgement, it is not unreasonable for the Council to seek assurance regarding the detail and deliverability of a formal WMP.
16. In finding unreasonable behaviour by the Council in it raising an additional reason for refusal at appeal, the matter of unnecessary or wasted expense in the appeal process needs to be considered. I acknowledge that the applicant appointed a planning consultant to prepare his appeal case. This included a commentary on the Council's response to the recent adoption of the CDP, including a rebuttal to the alleged conflict with Policy 21.
17. However, as both parties were given the opportunity to comment on the implications of the adoption of the CDP for the appeal, it is highly probable that the applicant would have prepared a response anyway, and to my mind the work involved in the rebuttal of the cited conflict with Policy 21 was limited. Furthermore, even if the Council had not included reference to conflict with Policy 21, given the proposal's lack of compliance with other policies, it would not have avoided an appeal and the need to prepare supporting documentation.

Conclusion

18. Therefore, although I find that unreasonable behaviour by the Council has, in part, been demonstrated, this has not resulted in unnecessary or wasted expense, as described in the Guidance. Thus, a full or partial award of costs is not justified.

F Cullen

INSPECTOR