
Costs Decision

Site visit made on 27 January 2021

by S J Lee BA(Hons) MA MRPTI

an Inspector appointed by the Secretary of State

Decision date: 15 April 2021

Costs application in relation to Appeal Ref: APP/Y2003/W/20/3255715 Land adjacent to Shirecroft, 34 Station Road, Epworth, Doncaster DN9 1JZ

- 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 & Mrs John Wainwright for a full award of costs against North Lincolnshire Council.
 - The appeal was against the refusal of planning permission for residential development including roads, sewers and means of access.
-

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that 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 process.
3. The applicants have raised three broad concerns. Firstly, that the Council had based their decision on incorrect and misleading information relating to whether the appeal site was within a particular development plan designation. Secondly, that the reason for refusal relating to archaeology was never raised as an issue and, if it had been, they would have supplied the evidence required. Thirdly, that the Council have not engaged effectively with the applicants to resolve any disputed issues.
4. The background to this first issue is a dispute between the parties as to whether the site lies within the North Lincolnshire Local Plan (NLLP 2003) Policy LC14 designation. This is a policy which seeks to protect the special landscape quality of the area. The applicants were provided with a map by the Council on 18 February 2020. The accompanying email suggests the map illustrates the most up-to-date Inset Plan for Epworth based on the 2016 Housing and Employment Land Allocations Development Plan Document (HELA 2016). It also suggests that it shows the saved elements from the NLLP that were not superseded. This map excludes the appeal site from the LC14 designation.
5. Subsequently, the application was refused at least partially on the basis that the site lies within the LC14 designation and would conflict with the requirements of this policy. A map was attached to the Committee Report which shows the LC14 designation washing over the site. This is as it was identified in the NLLP.

6. There is a clear contradiction between the information provided to the applicants and that provided to the Members. A significant part of the applicants' planning case was that the Council was wrong to consider the site as being within the LC14 designation.
7. The Council provided some evidence in relation to the development plan and chronology of saved policies both in terms of the planning case and rebuttal to the costs application. However, in order to try and understand the situation it was necessary to ask the Council for a definitive copy of the Adopted Policies Map and further comments on this issue during my consideration of the appeal. It was only at this point the Council acknowledged that the copy of the map provided to the applicants contained a plotting error.
8. My consideration of what constitutes the correct position, based on the evidence before me, is given in my decision and it is not necessary for me to repeat this here. Nevertheless, the contradiction between the HELA and NLLP inset maps gives rise to potential confusion about the status of the LC14 designation in this location. Even if the Council were not aware of the applicants' position prior to submission of the appeal, their Statement of Case would have highlighted the confusion. It is clear that the email and map extract sent to the applicants caused confusion and the basis for the dispute which followed.
9. As a plotting error, this should have been a relatively simple matter to explain and resolve, if not prior to the appeal being submitted then certainly in the Council's response to the applicants' Statement of Case. Instead there have been unnecessary protracted discussions and debates in the written evidence about something which should be clear and factual. The lack of clarity on the Council's website has clearly not helped matters, as there should be a single definitive source where all policies of the development plan are accurately identified. There should be no need for cross referencing of plans or relying on an investigation of documents to establish the correct designation.
10. As I concluded in my decision, there is no clear evidence to suggest that the applicants' interpretation of adopted policy is correct. However, it is also clear that they had come to their conclusions based on incorrect and misleading information provided by the Council. I therefore conclude that the Council's actions regarding this issue were unreasonable. It is not possible to know whether the applicants would have proceeded with an appeal if they had been satisfied about the status of the site. Even if they had, they may have addressed the issue differently. Moreover, the applicants have been required to provide comment on additional information on this issue requested during consideration of the appeal. It is reasonable to assume therefore that there will have been some wasted expense resulting from this behaviour.
11. The applicants have argued that it was also unreasonable of the Council to refuse the application on grounds of archaeology without raising the issue with the applicants or asking for additional evidence to address their concerns. They argue that this is a different approach to that adopted for flooding, where additional information was requested and submitted. The Council suggest that the latter was a requirement of the validation process, but that there was little point in raising the issue of archaeology as they were not minded to grant permission in any event.

12. While I acknowledge it may be frustrating to see issues listed on reasons for refusal which were not raised prior to the decision, this is not necessarily indicative of unreasonable behaviour. Given the comments from the Council's Historic Environment Officer, it was reasonable for the Council to have had some concerns about this issue. Nevertheless, it is also clear that the Council would still have refused the application even if their concerns about archaeology had been resolved. In this context, asking the applicants to go to additional time and expense without any prospect of success might have been considered unreasonable in itself.
13. I am satisfied therefore that it was not unreasonable for the Council to decide the application without asking for any additional evidence as this would have been moot. Moreover, it is for the applicants to decide how they wished to progress the appeal and it was their decision to go to the expense of commissioning additional evidence to support their case. I see no fault with the Council in this respect.
14. Finally, general concerns have been raised about the reticence of the Council to enter into discussions with the applicants about how the proposal could have been amended to be acceptable. However, given the Council's position, it seems highly unlikely that further discussions either before the decision had been made or since would have persuaded the Council that development of the site would be acceptable. Moreover, costs can only be awarded in relation to behaviour affecting the appeal process. Other than in relation to the dispute about Policy LC14, it also seems unlikely that further discussion would have narrowed the scope of the appeal. Accordingly, I do not consider the Council's behaviour to be unreasonable in this regard.

Conclusion

15. I have found that the Council acted unreasonably regarding the dispute about Policy LC14 which is likely to have caused the applicants to incur unnecessary or wasted expense in the appeal process. I have found no other examples of unreasonable behaviour.

Costs Order

16. 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 North Lincolnshire Council shall pay to Mr & Mrs John Wainwright, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing issues relating to incorrect information relating to Policy LC14; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to North Lincolnshire 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.

S J Lee

INSPECTOR