
Costs Decision

Site visit made on 23 May 2021

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 June 2021

Costs application in relation to Appeal Ref: APP/C2708/W/21/3270277 Land south of A65 and east of Tatterhorn Lane, Ingleton, North Yorkshire

- 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 J Garnet of JW & RJ Garnett Property for a full award of costs against Craven District Council.
 - The appeal was against the refusal of planning permission for a full application for the development of four dwellings.
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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, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. An award of costs may be made on procedural and substantive grounds.
3. The appellant claims that while the local planning authority (LPA) did ask for further information relating to flood risk matters, upon receipt of this information on 11 May 2020 the LPA then failed to do anything with the application for seven months. It is suggested that it was not until of the threat of an official complaint, and possible involvement of the Local Government Ombudsman, that a decision was eventually made to refuse planning permission which was some 13 months after the submission of the planning application. The view expressed is that there should not have been a need for the appeal and that the Council could have determined the planning application much sooner.
4. In addition to the above, the appellant contends that the LPA has not substantiated its view that the flood risk sequential assessment was not passed, particularly bearing in mind that the same methodology was agreed with the same agent and subsequently considered as part of the approval of residential development on a nearby site. In addition, it is claimed that the Council has included incorrect information about the provision of housing in paragraph 2.2 of its appeal statement.
5. I have dismissed the planning appeal on the basis of the harm that would be caused to the occupiers of the dwellings from a living conditions point of view. While the Council does seem to have taken a long time to determine the

planning application, seemingly without any reasonable explanation, given my decision to dismiss the appeal I do not agree that an appeal would not have been necessary even if the LPA had made its decision sooner. In other words, I am satisfied that the LPA was right to refuse planning permission based on the second reason for refusal. Furthermore, and acknowledging the delay in the determination of the planning application, it was nonetheless open to the appellant to appeal against non-determination of the planning application prior to the LPAs decision to refuse planning permission.

6. Notwithstanding the above, the evidence is that the Council has determined a planning application for residential development on a nearby site and as part of that process it considered the same flood risk sequential assessment methodology as detailed in the appeal flood risk sequential assessment. The LPA has not reasonably substantiated why it made a decision to assess the appeal proposal in a materially different way to that considered for the nearby site.
7. In addition to the above, and even if I had taken the view that in respect of the appeal proposal it was reasonable to require the appellant to look at unimplemented residential planning permissions, the LPA has not actually provided any evidence that there are in fact any such sites that are reasonably available, including those that would be unlikely to be implemented. I therefore consider that in regard to this reason for refusal, the Council has displayed unreasonable behaviour and the appellant has been put to wasted time and expense in pursuing this aspect of the appeal.
8. In respect of the Council's appeal statement, and specifically paragraph 2.2, I do agree with the appellant that reference to '*the Council through its Local Plan has sufficient allocated land to meet housing demand for Ingleton throughout the plan period and that allocated land is without flood risk 1*' is not correct. The evidence is that some of the allocated sites do appear to be in areas outside of flood risk zone 1 and, furthermore, there is also a need for housing windfall sites to meet the minimum housing requirement in the Plan period. I therefore find that the Council has displayed unreasonable behaviour in this regard and hence the appellant has been put to wasted time and expense in responding to this matter at final comments stage.

Conclusion

9. For the above reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in part. Therefore, the application for an award of costs is partially allowed.

Costs Order

10. 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 Mr J Garnett of JW and RJ Garenett Property, the costs of the appeal proceedings limited to those costs incurred in respect of (i) preparing for and responding to matters relating to reason No 1 (i.e. flood risk matters) of the Council's refusal notice and (ii) responding, at final comments stage, to comments made in paragraph 2.2 of the Council's appeal statement, such costs to be assessed in the Senior Courts Costs Centre if not

agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.

11. Mr J Garnett of JW and RJ Garnett Property is now invited to submit to Craven 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.

D Hartley

INSPECTOR