



Costs Decision

Site visit made on 25 May 2021

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 August 2021

Costs application in relation to Appeal Ref: APP/E2340/W/20/3264685 Site of former Barnsay Shed, Long Ing Lane, Barnoldswick BB18 6JF

- 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 Seddon Homes Limited for a full award of costs against Pendle Borough Council.
 - The appeal was against the refusal of reserved matters for 129 dwellings and associated roads, infrastructure and parking including details of appearance, landscaping, layout and scale.
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Decision

1. The application for costs is dismissed.

Reasons

2. Paragraph 30 of the Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an 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 against them where there is evidence of 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 applicant claims that the Council failed to produce evidence to substantiate its reason for refusal on appeal and provided only vague, generalised or inaccurate assertions about the proposal's impact, which were unsupported by any objective analysis. The applicant suggests that the decision refused reserved matters when the objections relate to issues that should already have been considered at outline stage. It contends that the decision has prevented or delayed development which should clearly be permitted.
5. In the absence of a detailed drainage scheme at the outline stage, the Council imposed a number of conditions to the permission requiring details of foul and surface water drainage and the assessment of associated flood risks on and off the site. Condition 4 tied the detailed drainage scheme to the outstanding reserved matters as each may inform and/or have some affect on the other.
6. At outline stage some elements of the drainage proposals were found acceptable in principle. This included a cut-off drain and the potential discharge of surface waters to a drain at the south-eastern corner of the site.

Nevertheless, the flood risk assessment by Paul Waite Associates (Ref. 15196/FRA/01) (FRA) and Condition 8 of the permission, identified that these details were subject to additional investigation requirements alongside a further detailed drainage assessment. It is clear, therefore, that the Council considered the 'indicative' drainage scheme before it at the outline stage and, by virtue of Condition 4 of the permission, was procedurally entitled to consider the more detailed drainage scheme alongside the reserved matters.

7. Although drainage is not a reserved matter in itself, it formed part of the infrastructure for the development and was referred to in the description of development for which detailed approval was sought. In considering the new drainage detail alongside the reserved matters as required by the terms of the permission, I find no unreasonable behaviour has resulted in that regard.
8. The Council's case concluded that the site currently acts to store surface water and therefore mitigates flood risk downstream. It stated that the proposed drainage scheme would not replicate the level of surface water storage and therefore would increase the risk of flooding elsewhere as the actual greenfield run-off rate would be lower than calculated by the applicant. However, it provided no detailed analysis for arriving at this conclusion. Although the responses of the relevant consultees were included in the Council's case documentation, there was little examination or reference to them. Aside from photographs showing a flooding event affecting the site and land downstream, there was little by way of objective analysis or detailed assessment of the drainage scheme in support of the Council's conclusion.
9. Although the applicant asserted that the decision was in conflict with the advice of statutory and non-statutory consultees, as I have found, this was not the case. The Lead Local Flood Authority and Earby and Salterforth Internal Drainage Board both highlighted a requirement to comply with Condition 4, amongst others. Despite this I find the Council's approach to the case conflicts with the advice in the PPG and the lack of objective analysis is tantamount to unreasonable behaviour in the appeal process.
10. Nevertheless, it does not automatically follow that this has incurred unnecessary or wasted expense in the appeal process. In the circumstances of the case, Condition 4 is clear on its face. It sets out the minimum requirements for information to be considered alongside any of the outstanding reserved matters.
11. The FRA identified a requirement for further investigation of flood risks outside of the development site. It stated that 'If the land owner of the adjacent field is unwilling to allow the developer to increase the culvert within their land then flows from the proposed filter drain will need to be attenuated on site prior to discharge into the culvert thereby ensuring flood risk downstream of the site is not increased'. The report recognised a requirement to re-evaluate the drainage strategy during the detailed design stage of the project 'to reflect information obtained by additional investigation works; the latest development layout plans; and to incorporate Statutory Authority requirements'.
12. The detailed drainage report by Atkinson Peck Consulting Engineers (Ref JSD/C20280 Rev A) also recognised that further investigation was required in regard to the condition of any off-site drainage and culverts. Although the applicant's claim was that this had taken place and information had been obtained for the purposes of discharging the requirements of

Condition 8 relating to the eastern off-site culvert, little evidence was provided for the purposes of the appeal in those respects.

13. The requirements of Condition 4 were clear and unchallenged. The absence of some of the detail required by it almost inevitably led to the refusal of the application before the Council. In effect, any other outcome would potentially have conflicted with the specific terms of the outline planning permission.
14. As the reason for the Condition is supported by the requirements in Policy ENV7 of the Local Plan for Pendle Core Strategy 2011-2030 [2015], the failure to meet the requirements of Condition 4 in relation to off-site flood risk would result in a conflict with the development plan.
15. The PPG states that where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application¹. Therefore, although I have found the Council's case is somewhat lacking in detail, I find their concerns were not unwarranted in the context of the Condition's requirements and of a site and downstream area which are formally identified as subject to surface water flood risk.
16. I note the applicant's reference to an award of costs against the Council in a case elsewhere. However, for the reasons given in the decision letter, I have found there is a distinction between the circumstances of the cases and have considered this case on its own merits.
17. Accordingly, whilst I find that unreasonable behaviour has occurred, it has not resulted in unnecessary or wasted expense as described in the PPG. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

R Hitchcock

INSPECTOR

¹ Paragraph: 050 Reference ID: 16-050-20140306