

Costs Decision

Site visit made on 24 August 2021

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2021

Costs application in relation to Appeal Ref: APP/Y2003/W/21/3272134 Farmyard to rear of Haywood House, High Street, Burringham DN17 3NQ

- 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 E Fowler for a partial award of costs against North Lincolnshire Council.
 - The appeal was against the refusal of the Council to grant outline planning permission for an outline application for residential development (9 no. houses).
-

Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) sets out that parties in planning appeals are expected to behave reasonably. It goes on to say that where a party has behaved unreasonably, and that unreasonable behaviour has caused unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. The PPG sets out examples of behaviour which may give rise to an award of costs against the Council.
3. In the terms of the PPG, the applicant suggests that the Council has behaved unreasonably in failing to produce evidence to substantiate each reason for refusal on appeal, and in making vague, generalised or inaccurate assertions about a proposal's impact, unsupported by any objective analysis.
4. In their view, this unreasonable behaviour is shown in the reason for refusal relating to drainage, unsupported by Officers or technical consultees, and in direct contrast to the conclusions of a previous Inspector (Appeal Reference APP/Y2003/W/19/3240730) who dealt with a much larger scheme on the same site.
5. Despite repeated requests, the Council did not offer any response to the Costs application.
6. I accept that in the face of third-party concerns, clearly expressed to the Council in their decision-making process, drainage was a matter of concern which the Council was fully entitled to take into account in making their decision.
7. The applicant had produced an FRA and Drainage Strategy with their application and this information, as well as technical consultee responses on the same, was before the Council when they took their decision. However, the

Council did not, and has not, produced any technical evidence to support their position, either at the time of making their decision or in defending the appeal. Nor have they sought to explain this.

8. The criteria for an application for an award of costs has two limbs. Firstly, a party must behave unreasonably. In the light of the previous appeal decision, and in particular, the Costs Decision which accompanied it, as well as the issue around evidence set out above, it is plain that the Council has done so in this case. The second limb of the test is that that unreasonable behaviour has caused unnecessary or wasted expense in the appeal process. Although the FRA and Drainage Strategy to support the proposal were produced in advance of the decision of the Council, and, by extension, the need for an appeal, the applicant has nevertheless had to address this reason for refusal in their appeal submissions. I consider that this represents unnecessary or wasted expense in the appeal process.

Conclusion

9. I therefore find that the Council has demonstrated behaviour, in relation to the reason for refusal concerning drainage which could be considered unreasonable in the terms of the PPG, and which then resulted in unnecessary or wasted expense.
10. The application for a partial award of costs should therefore be allowed.

Costs Order

11. 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 E Fowler, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in arguing against the Council's requirement that they had not demonstrated that the development could provide adequate drainage.
12. The applicant is now invited to submit to the 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 Dean

INSPECTOR