
Costs Decision

Site visit made on 31 August 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th September 2021

**Costs application in relation to Appeal Ref: APP/P2935/W/21/3274737
Land North West of Blue House Farm, Blue House Farm Road, Netherton
Colliery NE22 6BD**

- 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 Rabinder Bariana for a full award of costs against Northumberland County Council.
 - The appeal was against the refusal of planning permission for a proposed development originally described as an outline permission with some matters reserved for the construction of up to 9no. dwellings.
-

Decision

1. The application for an award of costs is refused.

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 claim is made on substantive grounds and is centred on whether the Council has acted unreasonably where it refused the application on matters related to ground gas.
4. The applicant has referred to where the PPG states that Local Planning Authorities are at a risk of an award of costs on the grounds of refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.
5. The applicant is concerned that ground gas has only become a matter of dispute at the point that the application that is the subject of this appeal was determined, and not during the course of the proceeding application and appeal¹, or at the time of pre-application advice. Whilst I can understand the frustration in this regard, the Council has advised that it did inform the applicant of its concerns and offered the possibility of extending the timescale for the determination of the application in order for this matter to be progressed.

¹ Appeal Ref: APP/P2935/W/19/3227761

6. Moreover, where this seems to have caused the applicant particular concern is due to the intention of addressing this matter ahead of the appeal against the refusal and also submitting a revised application, with the costs that were provided by a contractor to carry out ground gas monitoring. However, these courses of action are ultimately a matter for the applicant to decide on and the actions of a decision maker cannot be fettered because of how an applicant may wish to proceed. In any event, the related Phase II Ground Investigation Report did not form part of the applicant's appeal submission. It was presented at the 7 week stage, where new material or technical evidence should not be introduced.
7. In my appeal decision, I have set out why I consider the proposal would not be unacceptable in this regard. However, this is not a matter where a contrary position could not be taken in light of the potential for ground gas due to the historical coal workings. The Council's related reason for refusal is clear on this issue and its appeal statement satisfactorily amplifies these concerns.
8. As such, the Council's approach is not unreasonable and so it has not prevented the issues from being narrowed. Matters in relation to the level of expense do not therefore alter my view. Nor would it have avoided the appeal altogether because of concerns over whether the proposal would preserve the setting of a listed building. There is not substantive evidence before me that the applicant considers that the Council has acted unreasonably on this separate issue in relation to costs.
9. The applicant has also referred to where a Local Planning Authority is at risk of an award of costs by refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead.
10. Whilst I agree that a suitably worded condition(s) could address this planning ground including for both gas monitoring and related protection measures, as I have set out above, a different stance can be taken with some merit due to the site circumstances and this alternative course of action would necessitate the carrying out of the monitoring prior to the grant of a planning permission. Conditions would also not enable this proposed development to go ahead because the effect on the setting of a listed building remains an outstanding issue.
11. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. A full award of costs is not, therefore, justified.
12. I have also considered whether a partial award should be made, but I reach the same overall conclusion. The Council has provided sufficient evidence across all the grounds of refusal and so such an award of costs is also not justified.

Darren Hendley

INSPECTOR