



Costs Decision

Site visit made on 19 January 2021

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2021

Costs application in relation to Appeal Ref: APP/F1040/W/20/3258632 95 Bretby Lane, Bretby, Burton-on-Trent DE15 0QP

- 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 and Mrs Brian and Jean Mears for an award of costs against South Derbyshire District Council.
 - The appeal was against the refusal of the Council to grant planning permission for a development described as “outline development of an entry-level exception site for six wholly affordable starter homes for first time buyers (all matters to be reserved except for access) on land at SK2823 3536 (rear of 101 to 119) Bretby Lane, Bretby”.
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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 applicants are seeking an award of costs against the local planning authority on both procedural and substantive grounds. Examples of unreasonable behaviour are set out in Paragraph 047 of the PPG¹ in respect of procedural awards, and in Paragraph 049 of the PPG² in respect of substantive awards.
4. The appellants claim is based on the failure of the Council to seek a Design and Access Statement (DAS) when determining the planning application. A DAS was submitted by the applicant only at appeal stage, at the request of the Planning Inspectorate. The applicants consider that the failure to request a DAS earlier was a “professional failure” of the Council, and that it resulted in their incurring “considerable expense”.
5. Article 9 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 requires that some planning applications must be accompanied by a DAS. This applies to “major development”³ or,

¹ Reference ID: 16-047-20140306

² Reference ID: 16-049-20140306

³ Relevant criteria here being the provision of 10 or more dwellinghouses, the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more, or development carried out on a site having an area of 1 hectare or more.

where any part of the development is in a designated area⁴. The Council's Local Validation Criteria are similar, requiring a DAS for an outline planning application "for major developments, or for the erection of 1 or more dwellings or for 100m² or more of floorspace in a Conservation Area".

6. The appeal site is not in a Conservation Area or any other designated area. The proposed development of six dwellings on a site which, according to the planning application form, has an area of 3,077m² (0.347 hectares), did not fall within the definition of "major development". The applicants' evidence indicates that a DAS was requested by a letter from the Inspectorate on 6 October 2020, which was followed up by an e-mail response to the applicants' agent (who had queried the need for a DAS) on 13 October 2020, advising that "the LPA should have requested one during the application".
7. The applicants argue that "either the LPA is wrong and its policies not compliant with national requirements in not requesting a DAS or the Inspectorate is wrong in requesting one". I agree with the applicants that both parties – the Council and the Planning Inspectorate – cannot be right. However, it appears to me on the basis that the evidence before me that the Council's interpretation of the requirements for a DAS was correct. It follows from this that I therefore cannot find that the Council has acted unreasonably in this regard.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

M Cryan

Inspector

⁴ A Conservation Area, or a property appearing on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention Concerning the Protection of the World Cultural and National Heritage (a World Heritage Site)