
Costs Decision

Site visit made on 13 September 2021

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2021

Costs application in relation to Appeal Ref: APP/C2708/W/20/3264796 Land at Ling Haw Hill/ Brow Top, Cononley Road, Glusburn, 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 and Mrs B H Green for a full award of costs against Craven District Council.
 - The appeal was against conditions Nos 3 and 26 of planning permission 2019/21188/VAR described as an outline application with all matters reserved for the construction of twenty houses with the exception of access, layout and scale.
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Decision

1. The application for an award of costs is allowed in part, in regard to the Council's behaviour in respect to the imposition of condition No 26 of the outline planning permission Ref 2019/21188/VAR which led to unnecessary expenditure for Mr and Mrs B H Green.

The submission by Mr and Mrs B H Green

2. Mr and Mrs Green advance that the matters of scale and building heights have already been approved and therefore reference to the latter should not be made in condition No 3. Consequently, they advance that this condition, as worded, does not meet the prescribed tests for planning conditions.
3. Mr and Mrs Green also advance that condition No 26 is additional to those attached to the previous outline planning approval and was imposed by the Council without any prior discussion. Mr and Mrs Green consider that all of the necessary planning obligations to meet the terms of the current adopted Local Plan are already secured through an existing legal agreement. They advise that their attempts to clarify this matter with the Council subsequent to their decision were unsuccessful. They maintain that condition No 26 is unnecessary and does not meet the prescribed tests for conditions.

The response by Craven District Council

4. In respect to condition No 3, the Council has reaffirmed its view that procedurally they could not and have not approved the proposed building heights and that condition is necessary to ensure that all aspects of the scheme are fully considered.

5. In respect to condition No 26, the Council advances that the condition is necessary in order that the appeal proposal meets the requirements of the current adopted Craven Local Plan.

Reasons

6. The original outline planning permission set the scope of the reserved matters. The appellant did not seek to challenge that decision within the statutory time period given. Procedurally, the subsequent approval of an application made under section 73 of the Town and Country Planning Act 1990 ('the Act') was bound by that scope. Moreover, the necessity of condition No 3 and its scope are clearly articulated in both the Council's officer report and decision notice. As set out in my Decision, there are clear procedural reasons why the Council could not approve any of the matters that were listed within condition No 3, including proposed building heights and did not grant such approval inadvertently.
7. Crucially, Mr and Mrs Green have been represented by a planning professional at both the planning application and appeal stages. The Council's stance is a procedural fact, not subjective judgement and is not unreasonable behaviour. Nonetheless, Mr and Mrs Green decided to pursue their appeal in respect to condition No 3. In view of the outcome in respect to condition No 3, Mr and Mrs Green have not incurred unnecessary costs in making their appeal, insofar as it related to that particular condition.
8. The necessity of condition No 26 and its scope are not clearly articulated within the officer report. This ambiguity follows through in the wording of the condition. This led Mr and Mrs Green to make a reasonable request for clarity on the necessity and requirements of condition No 26. However, the Council has not provided any evidence to demonstrate that they provided that clarity. Moreover, the Council has had opportunity to provide clear justification for imposing this condition through the course of this appeal but has failed to do so. This is unreasonable behaviour.
9. The Council's behaviour directly led the applicants to exercise their right of appeal and I have found that condition No 26 does not meet the prescribed tests for planning conditions and should be deleted. This led to unnecessary costs for Mr and Mrs Green in terms of the preparation of their appeal in respect to Condition No 26.

Conclusion

10. For the reasons given above, I do not find unreasonable behaviour from the Council on substantive or procedural grounds, as described by the Planning Practice Guidance, is evident in respect to the scope of condition No 3. Consequently there has been no unnecessary expense to Mr and Mrs Green in terms of the preparation and submission of their appeal in respect to that specific condition.
11. However, I do find that unreasonable behaviour from the Council on substantive grounds, as described in the Planning Practice Guidance, is evident in respect to the imposition of condition No 26. This in turn has caused unnecessary expense to Mr and Mrs Green in terms of the preparation and submission of the relevant appeal through an appointed agent in respect to that unnecessary condition. Therefore, a partial award of costs to Mr and Mrs Green is justified in this instance for the unnecessary expenses incurred in respect to condition No 26.

Costs Order

12. 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 to Mr and Mrs B H Green, the costs of the appeal proceedings described in the heading of this decision insofar as they relate to condition No 26; such costs are to be assessed in the Senior Courts Costs Office if not agreed.
13. Mr and Mrs B H Green are 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.

C Dillon

INSPECTOR