
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/20/3265528 Land at Ling Haw Hill, 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 Craven District Council for a full award of costs against Mr and Mrs B H Green.
 - The appeal was against the failure to determine an application for consent, agreement or approval of details required by conditions of a planning permission relating to appearance and landscaping.
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Decision

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

The submission by Craven District Council

2. Craven District Council advance that Mr and Mrs B H Green have withheld information and revisions to a scheme which prevented the proper assessment of the planning application and have sought 'a quasi-twin tracked application procedure' by setting out different reasoning for the same situation. The Council considers that it sought to obtain the necessary information to reach a positive outcome. They also argue that by submitting a second application for the same reserved matters, Mr and Mrs Green must have taken the Council's concerns on board, despite refusing to do so in respect to the appeal application.
3. The Council also argues that the appeal is deficient of the visual assessment which they sought from Mr and Mrs Green during the determination stage. They consider that the appellants are perpetuating a scheme as a means of asserting that the consideration of the visual effects of the development are not required. They consider that this leaves the Inspector in the same position, being expected to allow a scheme wholly deficient of the necessary information.
4. The Council asserts that Mr and Mrs Green's actions amount to an abuse of the Appeals process. The Council also considers that these actions have resulted in having to defend an appeal which has little chance of success because of a lack of evidence. Consequently, they submit that these actions amount to unreasonable behaviour which has resulted in the Council incurring unnecessary and wasted costs.

The response by Mr and Mrs B H Green

5. Mr and Mrs Green maintain that they were within their rights to submit their appeal given the Council's failure to determine the application within the required timescale. They assert that the Council did not seek an extension of time from them. They consider that the subsequent reserved matters application has little relevance to the appeal and the Council was not disadvantaged by its submission. They advise that it was submitted to establish a fallback position before outline permission expired.
6. Mr and Mrs Green state that the assertion that they refused to provide a visual assessment or amended plans is a misleading and fabricated statement and notes of the meeting are provided. They also provide correspondence which they consider demonstrates that they made attempts to contact the case officer to discuss the reserved matters application which is the subject of this appeal. They state that the Council did not raise concerns about building heights throughout the determination period.

Reasons

7. This appeal has arisen as the Council did not execute its statutory obligation in a timely manner, in the knowledge that a right of appeal exists in such situations. Subsequent to the Council's failure to determine the reserved matters application, Mr and Mrs Green were afforded the right to appeal under section 78 of the Town and Country Planning Act 1990 and legitimately chose to exercise that right. Mr and Mrs Green were also entitled to submit another application for a different proposal whilst their original scheme was determined through the Appeals process. Given the impending expiry of both of the outline permissions which existed at that time, this was not an unreasonable step.
8. Although a visual assessment was not provided, the submitted evidence is inconclusive as to why that was. The Council was able to make an assessment through their site visit for the purposes of their response to the appeal. Whether or not Mr and Mrs Green were aware of the matter concerning the building heights is not determinative to the outcome of this particular application for costs.

Conclusion

9. For the reasons given above, I do not find that unreasonable behaviour from Mr and Mrs B H Green on substantive or procedural grounds, as described in the Planning Practice Guidance (PPG) is evident. Consequently, neither has any unnecessary expense in terms of defending this appeal occurred for the Council.
10. As the relevant tests set out in the PPG in respect to the determination of costs applications have not been met, I conclude that an award for costs is not justified.

C Dillon

INSPECTOR