
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 Craven District Council for a full award of costs against Mr and Mrs B H Green.
 - 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.
-

Decision

1. The application for an award of costs is allowed in part, in regard to the behaviour of Mr and Mrs B H Green in respect to the imposition of condition No 3 of the outline planning permission Ref 2019/21188/VAR which led to unnecessary expenditure for Craven District Council.

The submission by Craven District Council

2. The Council advances that the use of condition No 3 is procedurally correct, fully justified and also necessary to ensure that all aspects of the scheme are fully considered. They advance that this position of fact was conveyed to Mr and Mrs Green through the discussions that have taken place.
3. The Council has also advanced that the use of condition No 26 is necessary to ensure that the appeal scheme meets the infrastructure requirements of the current adopted Craven Local Plan ('the Local Plan').
4. The Council considers that the failure of Mr and Mrs Green to accept the validity of these conditions has led the Council to having to unnecessarily expend resources to defend their position.

The response by Mr and Mrs B H Green

5. In respect to condition No 3, Mr and Mrs Green has advanced 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. They maintain that this condition, as worded, does not meet the prescribed tests for planning conditions.
6. Mr and Mrs Green have also advanced that condition No 26 was additional to those attached on 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 secured through an existing legal agreement. They advise that their attempts to clarify this 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.

Reasons

7. The original outline planning permission set the scope of the reserved matters. Mr and Mrs Green did not seek to challenge that decision within the statutory time period afforded. 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 they did not grant such approval inadvertently.
8. 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. Nonetheless, they decided to pursue their appeal in respect to condition No 3, which under these circumstances was unreasonable. In view of the outcome of the appeal, the Council has incurred unnecessary costs in defending their position insofar as it related to condition No 3.
9. 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.
10. In these circumstances the Council's unreasonable behaviour directly led the applicants to exercise their right of appeal. I have found that condition No 26 does not meet the prescribed tests for planning conditions and should be deleted. Consequently, contrary to the Council's argument, Mr and Mrs Green's appeal was justified and reasonable insofar as it related to condition No 26. Therefore, the Council did not incur any unnecessary costs in defending their position insofar as it related to that particular condition.

Conclusion

11. For the reasons given above, I find that unreasonable behaviour from Mr and Mrs B H Green on substantive grounds, as described in the Planning Practice Guidance, is evident in respect to their response to condition No 3. This in turn has caused the Council unnecessary expense in terms of the preparation and submission of their response to the appeal in respect to that specific condition. Therefore, a partial award of costs to the Council is justified in this instance for the unnecessary costs incurred in respect to condition No 3.

12. Nonetheless, I do not find that unreasonable behaviour from Mr and Mrs Green on substantive or procedural grounds, as described in the Planning Practice Guidance, is evident in respect to their response to condition No 26. Consequently there has been no unnecessary expense for the Council in terms of the preparation and submission of the relevant appeal in respect to that specific condition.

Costs Order

13. 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 Mr and Mrs B H Green shall pay to Craven District Council the costs of the appeal proceedings described in the heading of this decision insofar as they relate to condition No 3; such costs are to be assessed in the Senior Courts Costs Office if not agreed.

14. Craven District Council is now invited to submit to Mr and Mrs B H Green, 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