
Costs Decision

Site visit made on 14 September 2021

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2021

Costs application in relation to Appeal Ref: APP/A3010/W/21/3276609 Land West of Number 6 Dean's Close, Misterton DN10 4BL

- 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 T Griffiths of Griffin Design and Build Ltd for a full award of costs against Bassetlaw District Council.
 - The appeal was against the refusal of planning permission for the erection of nine detached dwellings and garages including new access.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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. Costs may be awarded to any party regardless of the outcome of the appeal.
3. In this case, the planning application subject to appeal was referred to the planning committee with a recommendation to grant planning permission and detailed reasoning was given for that recommendation. In refusing the application, it is contended that Policies 1 and 5 of the Misterton Neighbourhood Plan (the NP) were applied incorrectly in determining whether the location of development was suitable having regard to the spatial strategy for the area. Furthermore, it is alleged members took an erroneous and unreasonable approach to Policy DM4 of the Bassetlaw District Local Development Framework Core Strategy and Development Management Policies DPD (the DPD) and advice in the National Planning Policy Framework (the Framework) as they relate to the new access and highway safety.
4. As a result, it is contended the Council has prevented and delayed development that should clearly be permitted and has relied upon vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis. There was no response received by the Council when contacted with regards to these assertions.
5. Members of a planning committee are not duty bound to follow the advice of their planning officers. The decision is one which is a matter of judgement. However, where members take decisions on planning applications, they must

do so in accordance with the development plan unless material considerations indicate otherwise.

6. Policy 1 of the NP relates to major developments, which are specified in part 1 of the policy wording as constituting 10+ dwellings. Given the proposal was for 9 dwellings, the second part of Policy 1 did not apply to the proposal. Policy 5 advocates support for windfall sites in the NP area subject to certain criteria. It was argued by the Council that the proposal did not meet the criteria of a windfall site as 'such development will take place on the brownfield site identified within the Neighbourhood Plan'. However, Policy 5 clearly states 'proposals for residential development within the development boundary will be supported subject to the following criteria.' There was no objection on the grounds of any of the criteria listed in this policy.
7. It appears to me that the policies quoted by the planning officer (CS1 and CS7 of the DPD) in their recommendation report, which were not given in the reason for refusal, were of much greater relevance in the determination of the acceptability or otherwise of the location of development in principle. As such, I agree that the Council has misapplied both NP policies 1 and 5.
8. With regards to the access and its impact on highway safety, the Council's highways advisor raised no objection to the scheme subject to conditions. I understand the appellant worked closely with the highway advisors to design a suitable access and internal road layout in this regard. Policy DM4 is vague and generalised with regard to matters of highway safety. However, the Framework is clear in paragraph 111 that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
9. I have not been provided with minutes of the committee meeting or any other substantive information as to how the members concluded that a decision should be taken otherwise than in accordance with the advice of its highways officer. As such I have no substantive evidence to justify the decision taken by the members to refuse planning permission on the grounds of highway safety.
10. In these circumstances, the refusal of planning permission constitutes unreasonable behaviour contrary to the basic guidance in the Framework and the PPG and the applicant has been faced with the unnecessary and wasted expense of lodging the appeal.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

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 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Bassetlaw District Council shall pay to Mr T Griffiths of Griffin Design and Build Ltd the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Bassetlaw 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 McDonagh

INSPECTOR