
Costs Decision

Site visit made on 9 September 2021

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15/12/2021

Costs application in relation to Appeal Ref: APP/W1850/W/21/3269264 Land at Derry View, Newton Lane, Dorstone, Herefordshire HR3 5SX

- 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 Graham Powell for a full award of costs against Herefordshire Council.
 - The appeal was against the refusal of planning permission for: Retention of caravan for residential occupation by Graham Powell for a temporary period.
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Decision

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

Preliminary Matter

2. The appeal has been linked to another appeal relating to the site, against the issue of an enforcement notice (reference APP/W1850/C/21/3272274). The costs application has, however, only been made with reference to the appeal referred to in the header above.

Reasons

3. Paragraph 030 of the Planning Practice Guidance on Appeals (the PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
4. I have summarised the grounds for the costs application as follows:
 - The Council failed to recognise that its refusal to grant a temporary, personal planning permission would deprive the applicant of his home, contrary to his right under Article 8 of the European Convention on Human Rights.
 - The Council failed to identify any of the interests under Article 8 (2) of the European convention on human rights that would have justified its decision to violate his rights under Article 8.
 - Had the Council assessed the planning application correctly, it could not have decided that the applicant's right should be violated and would have granted planning permission.
 - Had correct procedures been followed the Appellant would not have been put to the costs of an appeal.

5. I have had regard to the Council's response to the costs application.
6. Paragraph 049 of the PPG gives examples of the type of behaviour giving rise to a substantive award of costs against a local planning authority. These include 'preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations'.
7. My decision in this appeal has turned on the material considerations put forward by the applicant, which are his personal circumstances. I note that these are referred to at length in the letter submitted with the planning application¹, which refers to both his housing and medical situation. In its determination of the application², the Council has referred to these, but states that these would not outweigh the relevant planning policies.
8. In reaching this conclusion, I acknowledge that the Council has weighed the other material considerations against harm it has identified and conflict with the development plan. However, I do not find the Council's assessment of the applicant's personal circumstances to be robust in this regard. The above-mentioned letter sets out in some detail the applicant's situation, yet there is little assessment of this or reasoning as to how the Council has concluded as it did. I am also unable to conclude that the Council properly put its mind to the human rights legislation or Article 8 in its assessment of the application. In particular, the applicant's suggestion that a decision against him would effectively render him homeless is important, yet this is not mentioned in the Council's delegated decision report.
9. Notwithstanding the above, I cannot conclude that a refusal of the application would have been inevitable, even if the Council's assessment of the applicant's personal circumstances had been robust. Whilst I have allowed the appeal, my reasons for attributing the weight I have to the applicant's personal circumstances results in part from the evidence submitted with the appeal, which was not available at the application stage. For example, the correspondence from the Council's Home Point Lead, the information regarding the cost of privately rented housing, and the applicant's ability to afford this is evidence submitted at the appeal stage. Without this evidence, it is more likely than not that the weight given to the other material considerations in this case would not have been sufficient to justify the grant of permission.
10. In view of the above, I cannot conclude that, on the balance of probability, the appeal could have been avoided and that the Council refused an application for development which should clearly be permitted, having regard to other material considerations that were before it at the time. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated and an award for costs is not justified.

J Moss

INSPECTOR

¹ Letter dated 19 September 2019.

² The delegated decision report for application 193347.