
Costs Decision

Site visit made on 14 January 2022

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 25 January 2022

**Costs application in relation to Appeal Ref: APP/P2935/W/21/3285662
Site of former The Bungalow, Hight Pit Road, Cramlington,
Northumberland NE23 6RA**

- 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 Andy Mahmood, Black Knight t/a AF Tyres & Exhausts for a full award of costs against Northumberland County Council.
 - The appeal was against the refusal of planning permission for the erection of perimeter fencing & gates.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, costs may only 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.
3. The Planning Practice Guidance (PPG) states that local planning authorities are at risk of costs being awarded against them if they behave unreasonably with respect to the substance of the matter under appeal.
4. The Council did consider the applicant's suggestion of a fallback position of a 1m boundary that might be erected under permitted development rights in their appeal statement. On the evidence before me it does not appear that the applicant raised this notional fallback argument before the appeal stage. Given my findings of the material differences between the appeal proposal and such a fallback development and the fact that one of the aspects the Council objected to was its 2m height, it is unsurprising that this did not feature in the Council's officer report. The Council did not act unreasonably by not explicitly considering this matter when determining the application.
5. The Council's objections in respect of the development's effect on character and appearance were explained in some detail in paragraph 7.8 of the officer report. They set out in specific terms which aspects of the proposal they considered unacceptable in their reason for refusal with reference to relevant development plan policies, and it is clear from their statement what their concerns were. As such their refusal reason cannot be considered tenuous, as the applicant puts it, and the Council did not act unreasonably in this respect.
6. I can appreciate that finding out about the Council's objections about the design and appearance of the proposal only once the applicant felt they had

addressed the Council's concerns on highways matters will have come as a surprise and will have been frustrating. This will have been compounded by the length of time the planning application had been outstanding. Furthermore, it appears that the first indication of a concern about appearance was initially expressed in terms of a request that the fencing should match the car sales lot opposite, a position that evidently changed later. Less than a week before the Council made its decision the Council also mentioned that the fencing should follow 'the existing building line'.

7. The Council could clearly have been more helpful in flagging up concerns over siting and appearance much earlier in the process. Given the context of the site they could have been more explicit what they meant by 'building line' and whether or not they meant the line of existing adjacent and nearby walls and railings. Nevertheless, the applicant was clear that they wished to pursue the submitted scheme having heard the Council's concerns.
8. Confusion may have arisen from the applicant's elevation drawing which shows vertical railings and an accompanying detailed drawing shown a very different mesh type fence, which the Council sought to clarify. The appellant subsequently indicated that their intention was to use railing panels that they already had and illustrated them with photographs. Nevertheless, it would have been more helpful if the Council had made their concerns over design and siting earlier and less equivocally, especially in light of the length of time the application had been outstanding. However, the Council did set out their objections in their reason for refusal, and the applicant did not wish to alter the design in any event. Even had the Council been more helpful, in all probability the appeal would not have been avoided, nor the issues in dispute narrowed any further, as the issue remained in contention. Consequently, the Council did not act unreasonably in the terms of the PPG in this regard.
9. The PPG points out that where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs.
10. All this leads me to conclude that unreasonable behaviour leading to unnecessary or wasted expense in the appeal process has not been demonstrated. Consequently, an award of costs is not justified, and the application is therefore refused.

Geoff Underwood

INSPECTOR