
Costs Decision

Site visit made on 11 January 2022

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9 February 2022

Costs application in relation to Appeal Ref: APP/P2365/W/21/3280932 Land adjacent to Mains Lane, Bispham Green, nr Mawdesley, Lancashire

- 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 Jason Millar for a full award of costs against West Lancashire Borough Council.
 - The appeal was against the refusal of planning permission for a development proposed that is described as 'To site a green shipping container connected to a series of drainage pipes laid out in a line with a suitable back stop, covered with soil.'
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and that the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG stipulates that the aims of the costs regime is to:
 - encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case.
 - encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay.
 - discourage unnecessary appeals by encouraging all parties to consider a revised planning application which meets reasonable local objections.
4. The PPG also provides a list of examples of the type of unreasonable behaviour that may give rise to a substantive award against a local planning authority. These examples include refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.
5. It will be seen from my decision that I agree with the Council's reasons for refusing planning permission. It follows that I am satisfied that the Council has

shown that it was able to substantiate its reasons for refusal and that they stand up to scrutiny on the planning merits of the case.

6. I understand the applicant's frustrations in respect of the lack of communication from the Council, and I have had regard to the newspaper article that he has provided in respect of the Planning Service Review. The applicant would have clearly benefitted from some sort of pre-application advice and guidance on the proposal.
7. Nonetheless, the Council's pre-application acknowledgement letter advised of potential delays that might occur in dealing with the enquiry due to the coronavirus pandemic, with access to emails and voicemails being limited. I also note that following the submission of the enquiry in March 2021 the applicant chose to request a refund in May 2021, two weeks after the deadline for a response had passed. It is undisputed that the case officer informed the applicant in a telephone conversation that election counting in May would result in a delay in the response. Nonetheless, given the advice about potential delays in the acknowledgement letter, I do not consider this to be a protracted or unreasonable period of time, and it was ultimately the applicant's decision to cease to continue with this service by requesting a refund. It is therefore not the case that the Council refused to enter into pre-application discussions, and I find that it has not behaved unreasonably in this respect.
8. The applicant questions the Council's assessment of the planning application, and whether a site visit took place. In doing so, it is stated that the site notices were only erected after the submission of his appeal statement of case. However, the Council's photographs of the site notices are dated 23 June 2021 which was during the course of the determination of the planning application. I do not have the exact location of where the site notices were erected before me. Nonetheless, given the lack of footways and vertical structures in the area, it is understandable why they may not have been able to have been displayed closer to the site. It is also uncontested that the Arboricultural Officer visited the site, and there is little of substance before me that would lead me to conclude that the case officer did not visit the site either at pre-application enquiry or planning application stage.
9. Whilst the Council's communication could have been improved during the processing of the planning application, and I recognise that a more helpful approach is encouraged, it is uncontested that the applicant was made aware of the requirement for a Noise Impact Assessment and Arboricultural Impact Assessment at validation stage. However, they chose not to provide them.
10. The applicant has reiterated that there would be no excavation works and I am aware that the Council's Arboricultural Officer stated that the relocation of the pipe to a central location would be unlikely to impact on the trees. Nonetheless, there is nothing within the consultation response to suggest that a tree report would not be necessary. In fact, the Arboricultural Officer states that it would not be appropriate to recommend approval due to the uncertainty and lack of information.
11. In light of the insufficient details and plans submitted with the application and appeal, it is therefore unclear whether the submission of additional details in respect of the siting of the proposal in relation to the trees would have resulted in the main issues being narrowed. For the reasons above, I am also not

convinced that the local planning authority failed to properly exercise its development management responsibilities.

12. Moreover, the first reason for refusal, regarding whether the proposal was inappropriate development in the Green Belt, was clearly not a matter which could have been resolved through discussions and a resubmitted planning application given the clear divergence in the cases of the two main parties. I am also mindful that the applicant has not incurred any costs of professional services for the preparation of the written planning appeal or any technical evidence or information. Therefore, although the Council's communication might have been better, the outcome is unlikely to have been altered and so the applicant has not been put to unnecessary expense in the appeal process.
13. The Council has also confirmed that it considered there to be sufficient information to validate the planning application. This is an administrative matter in relation to the application and does not relate to costs incurred during the appeal process.
14. As such I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, an award of costs is not justified.

Mark Caine

INSPECTOR