



Costs Decision

Site visit made on 4 January 2022

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2022

Costs application in relation to Appeal Ref: APP/C2708/W/21/3279976 Land To North West Of Clay Hall, Broughton Road, Skipton BD23 3AA

- 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 Mandale Homes North Yorkshire for a full award of costs against Craven District Council.
 - The appeal was against the refusal of planning permission for the erection of 42 no. dwellings with associated landscaping and public open space.
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Decision

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

Reasons

2. Government guidance on the award of costs is set out in the Planning Practice Guidance (PPG). Paragraph 030 of that guidance notes that a party may have costs awarded against them in relation to appeal proceedings if they have behaved unreasonably and that behaviour has led another party to incur unnecessary expense. Those two matters are pre-requisites for an award; if there has been no unreasonable behaviour or no wasted expense an award will not be justified.
3. The Council did not seek to defend the second reason for refusal. However, the Council states that the reasons for refusal relating to highways, density and surface water were a matter of planning judgement, which could not be mitigated through a condition, and it was not unreasonable for Members to come to this conclusion. Furthermore, the Council highlights that the previous permission involved a significantly lower number of dwellings and therefore cannot be directly compared.
4. Council Members are entitled to go against the professional advice of Officers as long as it is clearly demonstrated why the proposal is unacceptable and clear evidence is provided to substantiate that reasoning. In this case, the Local Highway Authority, Environment Agency, Lead Local Flood Authority and the Canals and Rivers Trust did not object to the scheme subject to recommended conditions. Furthermore, the Council has not defended the second reason for refusal relating to an education financial contribution.
5. It is unclear why this matter was a reason for refusal. The reasons for refusal and reasoning within the Council's Statement of Case relating to highway safety, the education financial contribution and sustainable drainage are vague and are unsupported by any objective analysis. The Council has failed to

produce evidence to substantiate these reasons for refusal. As set out in my decision relating to the first and fourth reasons for refusal, the Council has not demonstrated that the matters were not capable of being dealt with by conditions. The Council has not robustly justified why elected Members came to a different conclusion to their Officers. Consequently, I consider that the Council has behaved unreasonably in this respect. As a result, the applicant has incurred unnecessary costs associated with instructing their professional consultants to address these issues as part of the appeal.

6. However, in terms of the third reason for refusal, relating to the visual impact of the proposed development, the Council's Statement of Case and reasons for refusal were clear and sufficient evidence was submitted to support the Council's stance. This matter required an exercise of planning judgement. In this respect, adequate evidence was submitted to show that it did not apply its judgement in an unreasonable manner. In addition, although relevant to the planning application, the previous permission cannot be directly compared to the scheme before me given the increase in dwellings. Consequently, I do not consider that the Council has prevented development that should clearly have been permitted, having regard to its accordance with the development plan, national policy and other material considerations.

Conclusion

7. The Council's reasons for refusal consisted of four elements. I have found, based on the evidence presented, that the first, second and fourth reasons for refusal were unreasonable, but not the third.
8. I therefore conclude that unreasonable behaviour, as described in the PPG, resulting in unnecessary or wasted expense has been demonstrated, and a partial award of costs, to cover the expense incurred by the applicant in contesting the first, second and fourth part of the Council's reason for refusal, is justified.

Costs Order

9. 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 Craven District Council shall pay to Mandale Homes North Yorkshire, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the first, second and fourth reasons for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Craven 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.

L M Wilson

INSPECTOR