



Costs Decision

Site visit made on 13 July 2021

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th February 2022

Costs application in relation to Appeal Ref: APP/C2708/W/21/3272876 Former Rockwood House, Park Wood Close, Skipton BD23 1QW

- 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 Robert Firth of Firth Developments Limited for a full award of costs against Craven District Council.
 - The appeal was against the refusal of planning permission for a development described as: Construct 6 no. detached dwellings with associated vehicular access and landscaping, without complying with a condition attached to planning permission Ref: 2020/21661/MMA, dated 4 August 2020.
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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 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.
3. The appellants application for an award of costs is predicated on the substantive grounds that the Council have failed to produce evidence to substantiate the reason for refusal; acted contrary to established case law; persisted in objecting to an element of a scheme previously found to be acceptable by an Inspector; not determined similar cases in a similar manner; and failed to produce reasons for departing from a previous decision. As a result, it is argued that the Council has delayed development that ought to have been permitted. No procedural grounds have been raised.
4. I am mindful that the Council's Planning Committee resolved to refuse planning permission against the advice of its Planning Officers. Whilst the Committee is not obliged to accept the recommendation made by the Planning Officer it should give reasons for reaching a different conclusion.
5. The Council submitted a Statement of Case in respect of the appeal which sets out that the Council considers that its case has been reported in detail in the documentation submitted with the Appeal Questionnaire return. The only detailed assessment of the proposal within those documents is the Officer's report to the Planning Committee that recommends planning permission should be granted. The Decision Notice issued by the Council sets out the reason for refusal. However, the Decision Notice does not, of itself, provide any evidence to justify the reason for refusal. Nor does the minute of the Planning Committee

meeting provide any assistance with this, simply recording the decision of the Committee but not recording any of the discussion.

6. The remainder of the Council Statement principally sets out either factual matters, or assertions that the Committee considered it was appropriate to reach the conclusion it did. The Statement does not include any further assessment of the proposal to support the Council's position. Although the Council has produced evidence, the evidence produced does not explain how the reason for refusal was arrived at in sufficient detail for me to be satisfied that there was some planning basis for the decision. The reason for refusal is consequently a generalised assertion about the proposal's impact, which is unsupported by any objective analysis of the scheme. In this respect the decision was unreasonable.
7. In terms of consistency in decision making, the Council has consistently refused planning permission for the development of the site for six dwellings. It has also been consistent in refusing planning permission for schemes that proposed a two storey dwelling on Plot 1. However, the Council did not raise the effect on Coach House as a reason for refusal when it considered the initial scheme proposing a two storey dwelling on Plot 1. I have no evidence that would indicate that there had been any material change in circumstances in the period between the initial application and the present proposal.
8. The Council argue that, as the original inspector refused planning permission for scheme with a two storey house on Plot 1, it was appropriate to consider whether the proposed increase in the scale of the dwelling would give rise to adverse amenity issues, and that the planning committee members are entitled to reach their own decision by attaching different weight to the various planning criteria. Whilst this may be the case, it does not alter the fact that in refusing planning permission for the original scheme, the Council's reason for refusal specifically included the effect on properties to the south and east and did not include the effect on properties to the north. The dwelling on Plot 1 proposed by the current scheme is the same design and in the same location as the two storey dwelling originally proposed.
9. Nothing has been put to me that would demonstrate that there has been a change of circumstances in the intervening period which would change the effect that a two storey dwelling would have on the property to the north, or which would lead the Council to conclude that this effect would be harmful when it was not considered sufficiently harmful to warrant inclusion in the sole reason for refusal given for the original proposal. This is clearly inconsistent in terms of the how the decision has been reached, notwithstanding the consistency in terms of refusing planning permission. As such the Council acted unreasonably.
10. Although it is claimed that the Council have acted contrary to, or have not followed, well established case law, nothing has been adduced setting out which legal principals or judgements have not been followed. The decisions of Planning Inspectors, whilst they are capable of being material considerations, are not case law.
11. Whilst there have been two previous appeals relating to the development of the site. Of these, only the first¹ proposed a two storey building on Plot 1. As set out in the Appeal Decision, the Inspector in the first appeal did not make an explicit finding of fact on the effect of this on Coach House.

¹ Appeal Ref: APP/C2708/W/19/3220508

12. The second Inspector was not considering the effect on Coach House of a two storey property on Plot 1 as that was not sought by the proposal in front of him. In this light, I do not consider that either of the previous appeal decisions indicates that an Inspector has found that a proposed two storey property on Plot 1 would be acceptable as neither decision specifically considered that point.
13. Notwithstanding the latter points above, I have found the Council's reason for refusal was not supported at appeal by robust evidence and was inconsistent with the previous decision the Committee had made on a similar proposal. As a result, a development that ought to have been given planning permission was delayed. Taken together, this amounts to unreasonable behaviour.
14. As a consequence of this, the appellant was obliged to pursue the matter at appeal. This will have incurred costs to the appellant in time spent collating evidence, preparing their statement of case, and responding to the Council's statement which would otherwise not have been necessary.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

16. 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 Mr Robert Firth of Firth Developments Limited, 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.
17. 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.

John Dowsett

INSPECTOR