



Costs Decision

Site visit made on 11 January 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2022

Costs application in relation to Appeal Ref: APP/H0928/W/21/3283769 Land adjacent to Brackenridge, High Hesket CA4 0HU

- 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 Ms J Nelson for a full award of costs against Eden District Council.
 - The appeal was against the refusal of planning permission for outline planning permission for the erection of up to five dwellings with all matters reserved.
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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 (PPG) advises that costs may be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may be procedural and/or substantive.
3. The applicant claims that the Council has acted unreasonably in that it has gone against the advice of its professional officers without good reason and there is no evidence to support/rationalise its reasons for refusing the application. Furthermore, the Council has not presented a case at appeal to substantiate its reasons for refusal.
4. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. The PPG also states that refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead.
5. I have noted the recommendation of the Council's Officers which was for approval. The planning committee is not duty bound to follow the advice of its Officers as long as its contrary decision is made on planning grounds and clear evidence is provided to substantiate that reasoning. Four reasons for refusal were given by the planning committee.
6. Reason for refusal one relates to the effect of the proposed development on the character and appearance of the area. This reason for refusal is a matter of judgement. This reason for refusal explains why the proposed development

was considered to be unacceptable and is framed within the context of the development plan.

7. The PPG states 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 against the local planning authority for unreasonable refusal of an application. I find this to be the case with refusal reason one, notwithstanding the fact that I have come to a different conclusion to the Council regarding the acceptability of the proposal with regard to this matter.
8. Reason for refusal two relates to a failure to demonstrate that a safe and suitable access point can be achieved. No evidence was put forward by the Council to support this reason for refusal. General assertions have been made about the safety of the proposed access and the U3454 road based mainly on local knowledge and understanding of traffic issues in the area. Local knowledge can be an important consideration, but alleged harm still requires to be substantiated by clear evidence. The Highway Authority did not raise any concerns regarding the safety of road users or pedestrians and was satisfied that appropriate visibility splays could be achieved.
9. Reason for refusal three refers to infrastructure limitations in the vicinity being close to capacity and that it has not been demonstrated how suitable additional capacity would be delivered. The reason for refusal does not specify what infrastructure is subject to the limitations or what additional capacity should have been provided, nor does the minutes of the planning committee meeting. No evidence has been presented by the Council to provide clarification or to substantiate the reason for refusal, and the submissions made about harm make generalised statements about a lack of capacity within a range of infrastructure networks.
10. Reason for refusal four relates to the effects of the proposed development on existing occupiers due to a failure to demonstrate that the site could be managed to ensure no unacceptable effects from pollution on existing occupiers, and also a failure to demonstrate that future occupiers would not have unacceptable effects due to pollution from the nearby highway. Reference is made to noise, vibration, dust and other forms of pollution although the committee minutes make reference just to dust concerns raised by the development.
11. No evidence has been presented by the Council to substantiate the reason for refusal. From the information submitted, the Council's environmental health officer did not raise an objection to the proposed development, and appropriate mitigation measures could be secured through conditions and the detailed design of the proposal.
12. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other relevant considerations, the development proposed should not have reasonably been refused for reasons relating to highway safety, a lack of infrastructure capacity and the effect on living conditions. Reasons for refusal two, three and four therefore constitute unreasonable behaviour contrary to the guidance in the

PPG and the applicant has been faced with the unnecessary expense of addressing these matters.

Costs Order

13. 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 Eden District Council shall pay to Ms J Nelson, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in arguing against the Council's reasons for refusal two, three and four; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Eden 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.

F Wilkinson

INSPECTOR