

Costs Decision

Hearing (Virtual) held on 15 December 2021

Site visit made on 16 December 2021

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 February 2022

Costs application in relation to Appeal Ref: APP/Z4718/W/21/3279040 Land to the south of Granny Lane, Mirfield

- 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 Miller Homes Ltd for a full award of costs against Kirklees Metropolitan Council.
 - The appeal was against the refusal of planning permission for residential development of 67 dwellings with associated access and parking.
-

Decision

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

The submission for Miller Homes Ltd

2. The costs application was submitted in writing.
3. The appellant considers that the Council have acted unreasonably by failing to produce evidence to substantiate the reason for refusal and making vague or generalised assertions about the likely impacts of the scheme on flooding not supported by objective evidence; and introducing fresh and substantial evidence at late stage with regards to highways, ecology, heritage and five year housing land supply that necessitated extra expense for preparatory work that would not otherwise have arisen.

The response by Kirklees Metropolitan Council

4. The Council's response was made in writing.
5. The Council contends that their evidence is robust and adequate for the purposes of the appeal. The Council indicate that concerns were based on Environment Agency guidance from "Defra / Environment Agency Flood and Coastal Defence R&D Programme, Flood Risk Guidance for New Development (2005)" and representations submitted by local residents.

Reasons

6. Paragraph 030 of the Planning Practice Guidance (PPG) 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.
7. The Council is not duty bound to follow advice of its professional officers however, if a different decision is reached then the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide

clear evidence to substantiate that reasoning. In this case, professional drainage and flooding officers, including from the Environment Agency, had not raised any objections to the proposal in terms of effects on flooding. The alleged harm with regards to flooding has not been substantiated other than by vague means of references to the Environment Agency's flood maps, flooding depths, road closures and climate change. On this basis, I find that the Council have acted unreasonably. Nevertheless, the evidence submitted by interested parties was substantial, including representations from two consultants as well as various local witness reports, photographic images and videos. Evidence provided in the appellants statement of case as well as at the hearing was sometimes in direct response to matters raised by interested parties. So, whilst I have found that the Council have behaved unreasonably, given the interested parties representations, I do not find that the unreasonable behaviour of the Council has resulted in unnecessary or wasted expense for the appellant.

8. The Council's comments in relation to highways, ecology, heritage and five year housing land supply were mainly in response to matters that were raised within the appellants statement of case or matters that were raised by interested parties. The Council have not acted unreasonably in this regard.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Chris Baxter

INSPECTOR