



Costs Decision

Site visit made on 22 February 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 March 2022

Costs application in relation to Appeal Ref: APP/Z2315/W/21/3286494 Land off Harrogate Crescent, former Isaac Centre BB10 2NX

- 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 McDermott Developments Ltd and Lancashire County Council for a full award of costs against Burnley Borough Council.
 - The appeal was against the refusal of planning permission for the erection of forty four two storey three and four bed houses.
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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 applicants submit that the Council has acted unreasonably by issuing an imprecise reason for refusal which resulted in the carrying out of unnecessary work for the purposes of making the appeal. Furthermore, the Council has gone against the advice of its professional officers without good reason and failed to substantiate the reason for refusal, relying on alleged and unfounded claims. The applicants also consider that the Council has not determined the proposed development consistently with similar proposals. The applicants contend that the proposed development complied with the development plan and should have been permitted and the necessary appeal has caused the appellants unnecessary and wasted expense. The Council disputes these claims.
4. The reason for refusal refers to insufficient medical facilities. The minutes of the planning committee meeting do not provide further clarification. I note the Council's point that it was made clear at the outset that its concerns relate to local health care services (GP practices and dentists) and that this was the focus of many of the objections to the application. However, the East Lancashire Hospitals NHS Trust (the Trust), which provides acute, emergency and secondary healthcare services, objected and reference is also made to a lack of capacity at the hospital in the comments from local ward councillors to the application.
5. Given this context, it is understandable that the applicants considered it necessary to address both primary and secondary health care provision in their statement. It was not until the Council's statement of case that clarification

was given that primary healthcare provision was the concern. The lack of precision in the reason for refusal has therefore led the applicants to unnecessary expense in addressing this part of the reason for refusal.

6. Whilst the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached, the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
7. Much of the Council's case is based on the everyday experiences of those who live in the local area. Local knowledge can be an important consideration, but alleged harm still requires to be substantiated by clear evidence.
8. Lancashire County Council (LCC), the local education authority, did not raise concerns about the proposed development nor did it require an education contribution to provide education places to cater for the requirement generated by the proposed development. Little evidence was put forward by the Council to support its contention that there are insufficient education facilities in the local area to support the proposed development. Assertions were made about its impacts and that a more appropriate reasonable walking distance is half a mile rather than the two mile radius used by LCC in its Education Contribution Methodology¹. To support this latter point, the Council refers to a document but full details of this have not been provided. Furthermore, information has been submitted on a nearby proposal where the Education Contribution Methodology was taken by the Council as an acceptable means of establishing the required contributions, including the two mile radius. It has not been sufficiently substantiated why a different approach was warranted in this case.
9. I note that the list of schools within a two mile radius of the appeal site was sent to the Council just in advance of the planning committee meeting with the caveat that it was not for public use. However, the consultation response from the LCC School Planning Team was submitted in advance of the planning committee. This clearly sets out the circumstances under which an education contribution would be requested, and that it was not required for the proposed development.
10. There is a similar lack of clear and substantiated evidence to support the alleged harm caused by the proposed development due to a lack of health care facilities in the local area.
11. 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. I find this to be the case here.
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 reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the guidance in the PPG and the applicants have been faced with the unnecessary expense of lodging the appeal.

¹ Education Contribution Methodology Infrastructure and Planning Annex 2, September 2020

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 Burnley Borough Council shall pay to McDermott Developments Ltd and Lancashire County Council, 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.
14. The applicants are now invited to submit to Burnley Borough 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