

Costs Decision

Hearing Held on 25 May 2021 and 14 September 2021

Site visit made on 15 September 2021

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th March 2022

Costs application in relation to Appeal Ref: APP/R1038/W/20/3257059 Woodside, Hackney Lane, Barlow, Derbyshire S18 7TB

- 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 North East Derbyshire District Council for a full award of costs against Mr Derek Mapp.
 - The hearing was in connection with an appeal against the refusal of planning permission for application for the redevelopment of large bungalow and outbuildings for five small bungalows and related infrastructure (revised scheme of 19/00440/FL).
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Decision

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

The submissions for North East Derbyshire District Council

2. The applicant considers that the appellant acted unreasonably by submitting an appeal that had no reasonable prospect of success as the proposed development's spatial and visual impact would cause material harm to the openness of the Green Belt and that in its view the other considerations or potential benefits of the proposal may provide were not of sufficient weight to outweigh that harm.

The response by Mr Derek Mapp

3. In response the appellant states that even if harm to the openness of the Green Belt has been identified, that this harm and any other harm could still be outweighed by other considerations such as the potential benefits of the proposed scheme to amount to very special circumstances that would justify it in accordance with national planning policy.

Reasons

4. The Planning Practice Guidance (the Guidance) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. It also states that examples of unreasonable behaviour by appellants include submitting a planning appeal that has no reasonable chance of success. Unreasonable behaviour in the context of an application for an award of costs may be either procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).

5. The applicant has stated that from the submission of the original planning application it was up to the appellant to demonstrate that the proposed development would not have a greater impact on the openness of the Green Belt than the existing development for it to not be inappropriate development in the Green Belt.
6. They also state that they consider that the appellant has failed to do this and as a result has failed to substantiate their case in this regard. However, even if a particular development proposal is found to be inappropriate development in the Green Belt this does not automatically mean that it would not be granted planning permission. This would be dependent on the decision maker undertaking a balancing exercise weighing the level of harm to the Green Belt and any other harm the proposal would cause against any other considerations in its favour such as any potential benefits it would potentially provide. The outcome of this exercise would then inform their balanced planning judgement as to whether any potential harm would clearly and demonstrably outweigh these other considerations thereby bringing about the very special circumstances that would then justify the proposal.
7. Consequently, just because the proposed development would potentially cause harm in one respect does not necessarily mean that a decision maker would automatically reject it without taking into account other considerations such as potential benefits before making a balanced planning judgement including an assessment of the level of any harm weighed against these benefits. Furthermore, just because one decision maker reaches a conclusion on one issue or consideration at application stage does not mean that another decision maker could not reach a different conclusion based on more detailed evidence and information such as that which was submitted by both main parties during the appeal process.
8. I note that the appellant excluded the car ports from the estimated volume figures from those first given in the originally submitted Planning Statement and on the application drawings. However, the figures were subsequently increased, and an estimated percentage increase in volume figure was agreed by the main parties as evidenced in the submitted agreed Statement of Common Ground. Moreover, based on the evidence I am satisfied that this confusion over whether the car ports were included or not appears to have been a misunderstanding rather than an attempt by the appellant to be deliberately misleading.
9. I also note that the appellant did not submit a Landscape and Visual Impact Assessment (LVIA) as part of the application. However, this is not the same as them not submitting any landscape evidence at all. Indeed, evidence in relation to the potential visual impact of the proposal was submitted as part of the application process including a visually verified montage report. They also employed a landscape consultant. I am therefore satisfied that the appellant made a reasonable attempt to substantiate their case in this regard.
10. In addition, it is reasonably clear that while the relationship between the main parties was not acrimonious, there would appear to have been significant areas of professional disagreement between them on several issues which came down to matters of fact and degree and planning judgement and that discussions of these issues may have been perceived in a negative manner by one side or the other.

11. The appeal process is there to ensure that where there are significant matters being disputed in this way that an independent arbiter can look at the case afresh and assess it objectively and impartially. Accordingly, I consider that the appellant acted reasonably in exercising their right to have their appeal heard by such an independent arbiter as is the reason for the existence of the planning appeals process.
12. Therefore, in my overall planning judgement, it appears to me that having regard to the evidence before me the appellant did not submit a planning appeal that had no reasonable chance of success. The submission of the appeal by the appellant in this case therefore does not constitute unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the Guidance. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated and that an award of costs is not justified.

C Coyne

INSPECTOR