



Costs Decision

Site visit made on 5 April 2022

by Nigel Harrison BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2022

Costs application in relation to Appeal Ref: APP/P1045/W/21/3289780 The Bungalow, Edgefold Road, Matlock, Derbyshire, DE4 3NJ

- 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 D Walker (Matlock Building Services) for a full award of costs against Derbyshire Dales District Council.
 - The appeal was against the refusal of an application (Ref: 20/00547/REM) which sought details of reserved matters pursuant to condition No. 2 of outline permission (Ref: (18/00418/OUT) for residential development of two dwellings and associated access.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Mr D Walker

2. The application was made in writing.

The response by Derbyshire Dales District Council

3. The Council's response was made in writing.

Reasons

4. 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.
5. The applicant says the following examples of unreasonable behaviour, as set out in PPG Paragraph 049, are pertinent to the costs application. Namely, preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy, and other material considerations; failure to produce evidence to substantiate each reason for refusal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and not determining similar cases in a consistent manner.
6. The Council, in turn, has responded to those examples. However, there are two main points, in my view, that go to the heart of the matter.
7. In his first main point the applicant says the thrust of the Council's case appears to be its objection to the scale of the proposed dwellings. It is clear from the conditions attached to the outline permission that no further submissions were required in respect of scale.

8. The Council says in its evidence that the scale and design of the dwellings, together with the associated retaining walls and excavation would be harmful to the character and appearance of the surroundings and would have an adverse effect on the setting of the Conservation Area. It adds that the dwellings would 'appear large', with 13.5m front elevations and ridge heights of 8.0m
9. The Council submits that scale does not simply mean the height of a building, but also its mass and bulk, adding that these were not approved at the outline stage. However, questions of mass and bulk are an integral part of an assessment of scale, and the approved parameters of ridge height, plan form, proposed finished ground levels indicate the resultant bulk and mass of the dwellings. Scale is defined in the Order as the height, width and length of each building proposed in relation to its surroundings, and the Council's evidence suggests that scale was fully considered at the outline stage.
10. As set out in my parallel decision on the appeal, I was satisfied that the plan form, dimensions, ridge heights, and base levels for the dwellings would not be at variance with the parameters established at the outline stage, including the indicative sections through the site. Whilst the Council is fully entitled to consider more detailed aspects of the design, which involve matters of professional planning judgement, in the reserved matters application it appears to have sought to revisit the approved details of the outline permission, through an undue emphasis on scale, and has refused to approve reserved matters when its objections related to issues that should already have been considered at the outline stage. On the face of it, that is unreasonable behaviour.
11. Bringing those points together, I am of the view that the Council has prevented development which should clearly be permitted, having regard to its compliance with the development plan, national policy, and other material considerations; failed to produce convincing evidence to substantiate the one reason for refusal; and made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. In simple terms, the submitted details (which were the subject of substantial revision throughout the application process) should have been approved, and the appellant has had to pursue an appeal that should not have been necessary. This has resulted in the appellant incurring unnecessary expense in having to refute these matters at appeal.
12. In his second main point the applicant says that the application process was protracted and communication with the local planning authority was poor, leading to unnecessary delays and expense. In this regard, PPG paragraph 048 says if it is clear that the Council will fail to determine an application within the time limits, it should give the applicant a proper explanation.
13. The application was submitted on 17 June 2020 and initially validated on 7 September 2020, although it was re-validated on 4 May 2021 following submission and clarification of the revised plans. Three extensions of time were granted for the Council to consider the application, which was not finally determined until 20 October 2021.
14. The prolonged period during which the application remained undetermined may to some extent have been avoided, particularly given the relatively straightforward areas of concern. Nonetheless, it would appear that part of the

delay was due to the many communications and efforts to secure a favourable outcome from the applicant's agent, and the need to re-consult and await replies from the highways authority, the lead local flood authority, the trees and landscape officer, and others in relation to the revised plans. Furthermore, the application was being considered at a time when the Council was adjusting to the new working arrangements brought about by the pandemic, including home working and the need to set up new processes.

15. Overall, and taking into consideration the significant number of exchanges between the parties on the revised and earlier schemes seeking to reach some common ground and understanding, I am satisfied that any shortcomings in the handling of the application, and the delays involved, do not by themselves amount to unreasonable behaviour. It therefore follows that my decision to award costs in this case does not include the time taken and expense occurred in the preparation of the revised plans, landscaping scheme, drainage details and technical reports, or extra any costs that may have occurred whilst the application was being processed.

Conclusion

16. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG Paragraph 049 with regard to the Council's consideration of the 'appearance' matter has been demonstrated, and that a **partial** award of costs is justified in the terms set out below.

Costs Order

17. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Section 7(2) and Schedule 3 of the Countryside and Rights of Way Act 2000, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Derbyshire Dales District Council shall pay to Mr D Walker, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in rebutting the single reason for refusal of details concerning the appearance of the development; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is now invited to submit to Derbyshire Dales 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.

Nigel Harrison

INSPECTOR