



Costs Decision

Site visit made on 30 March 2022

by M L Milliken BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2022

Costs application in relation to Appeal Ref: APP/E2340/W/21/3287075 Fields to the west of Foster Road, Barnoldswick BB18 5LW (Easting 387223, Northing 447492)

- 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 Homes for a full award of costs against Pendle Borough Council.
 - The appeal was against the refusal of planning permission for development described as '*Erection of 67no. dwellings with associated works including carparking and landscaping*'.
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Decision

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

Reasons

1. The Planning Practice Guidance (the PPG) advises that costs may be awarded against a party who has behaved unreasonably and that unreasonable behaviour in the context of an application for an award of costs may be either procedural or substantive, thereby causing the party applying for costs to incur unnecessary or wasted expense in the appeal process. This can include the failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
2. The applicant submits that the Council acted unreasonably in preventing development that accords with the development plan and national policy, taking into account other material considerations, and that the reasons for refusal comprise issues that could have been made acceptable through the use of planning conditions.
3. It is understood that pre-application advice was sought from the Council, and a copy of correspondence relating to the proposal has been provided in evidence. Whilst I understand frustrations on the part of the applicant with regard to favourable comments made by the Council during the pre-application stage, pre-application advice is not legally binding and does not fetter statutory determination.
4. I acknowledge that the Council's Planning Committee determined that planning permission should be refused, contrary to the recommendation of its officers. However, in this case, as is apparent from my conclusion in relation to the

appeal, I consider that material reasons exist for opposing the development, and the Council was therefore not unjustified in refusing planning permission.

5. With regards to the Council's Decision Notice and the first reason for refusal, the degree of which the proposed development would cause harm to the character and appearance of the surrounding area, with particular regard to the landscape, is an exercise of planning judgment. I find that the reasons for refusing the proposal on these grounds are adequately explained in the Council's statement of case and, indeed, following consideration of the details and merits of the scheme, I have concurred with the Council's assessment. With this in mind, I therefore consider it inevitable that the appellant would have had to lodge an appeal in any event in order to pursue the proposed development, and that the Council did not behave unreasonably in this respect.
6. With regards to the Council's second reason for refusal, at the time of determination of the application, committee members had detailed evidence before them regarding the effect of the proposed development on highway safety, including a suggested condition provided by the local highway authority detailing a number of off-site mitigation measures.
7. Whilst the Council and indeed its planning committee is entitled to take an objectionable view to development, it must do so for sound planning reasons that are capable of being defended. As I have found in the appeal decision, the Council has failed to adequately justify its position or provide compelling evidence to justify why, in its view, the proposal would have an unacceptable effect on highway safety, taking into consideration the off-site mitigation measures proposed. For the reasons provided within my appeal decision, I consider the proposed development to be acceptable in highway safety terms and I am not satisfied it has been demonstrated that the proposed development conflicts with the development plan or the National Planning Policy Framework (the Framework) in this regard.
8. I find that the Council has behaved unreasonably in refusing the application in this respect, which has resulted in unnecessary and wasted expenditure in respect to the cost of addressing the relative elements contained in the appellant's appeal statement and final comments, including the rebuttal statement.
9. With regards to the third reason for refusal, I consider that, at the time of determination of the application, Committee Members expressed fears regarding local flooding issues, in part due to outstanding concerns regarding the proposed drainage design, including the presence of an unresolved objection on the behalf of a statutory undertaker in that regard. As set out in my appeal decision, clarity regarding this matter has since been provided through the appeal process. I therefore consider that the Council did not behave unreasonably in this respect.
10. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting the Council's second reason for refusal, is justified.

Costs Order

11. 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 Pendle Borough Council shall pay to McDermott Homes, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's second reason for refusal, which concerned highway safety; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to the 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.

M L Milliken

INSPECTOR