
Costs Decision

Site visit made on 18 January 2022

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04/05/2022

Costs application in relation to Appeal Ref: APP/E0915/W/21/3283151 Land adjacent to Holme Meadow, Cumwhinton, Carlisle CA4 8DR

- 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 Frank Lowe (Magnus Homes Ltd.) for a full award of costs against Carlisle City Council.
 - The appeal was against the refusal of outline planning permission for erection of 9 no. self / custom build dwellings and 5 no. market dwellings.
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Decision

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

Reasons

2. 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 local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal or if the local planning authority grants planning permission on an identical application where the evidence base is unchanged, and the scheme has not been amended in any way. 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).
3. The applicant considers that the Council has acted unreasonably by failing to show that it had reasonable planning grounds for its decision; delaying the determination of a subsequent application; and having come to a positive decision in determining this application by not withdrawing its reason for refusal.
4. I note that the Council's officer report sets out in some detail their reasons as to why they considered the proposed development acceptable. However, the Council is not duty bound to follow the advice of its professional officers and it is within the democratic remit of members of a planning committee to make a planning decision against the advice of its officers.
5. The minutes of the planning committee meeting clearly highlight the concerns that some members had in relation to the proposal's potential intrusion into the open countryside. The minutes also show that in making their decision the committee members had regard to the officer's original recommendation, the information and plans submitted by the appellant, the views of the

Development Manager, the views of statutory consultees, and the views of interested parties. It is also clear that the agent had the opportunity to verbally address the committee to put forward arguments in favour of the proposed scheme.

6. Therefore, from the evidence before me the relevant planning merits of the scheme appear to have been explained to the members of the Council's planning committee and it is apparent that all the other information and evidence submitted by the applicant, was before them when they made their decision. Consequently, I am satisfied that the Council made its decision based on all the information and evidence before it including that submitted by the applicant. I am also satisfied that it gave a clear reason for refusing the application i.e., that in its view the proposal would represent an unacceptable intrusion into the open countryside.
7. Regarding the subsequent planning application, it is clear from the evidence that while this scheme was similar to the appeal proposal there were amendments made meaning that it was not identical to it. As a result, I am also satisfied that the Council did not subsequently grant planning permission on an identical application.
8. Therefore, in my overall planning judgement, it appears to me that having regard to the evidence before me the Council adequately explained the reasoning behind their decision and why they subsequently approved a similar scheme to the appeal proposal. As a result, I find that the Council had reasonable concerns about the impact of the proposed development which justified their decision. The refusal of planning permission in this case and the subsequent granting of planning permission for a similar but not identical scheme therefore does not constitute unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the Guidance.
9. Accordingly, I consider that the Council did not fail to produce evidence to substantiate each reason for refusal on appeal or that they granted planning permission on an identical application where the evidence base was unchanged, and the scheme had not been amended in any way.
10. 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