
Costs Decision

Site visit made on 12 April 2022

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2022

Costs application in relation to Appeal Ref: APP/G2713/W/21/3285270 Land to north of North Moor Road, Easingwold

- 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 Parker, Parker Oak Ltd for a full award of costs against Hambleton District Council.
 - The appeal was against the refusal of planning permission for the demolition of existing agricultural building and erection of new Oak Frame joinery workshop, complete with offices, covered stores, yard and carparking.
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Decision

1. The application for an award of costs is partially 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 thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant considers that the Council's approach amounts to procedural and substantive unreasonable behaviour. Concerning paragraph 49 of the PPG, the applicant has cited grounds in relation to preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal on appeal; and not determining similar cases in a consistent manner.
4. The applicant has placed emphasis on the Highway Authority (HA) not objecting to the planning application. This was however predicated on improvements been made to the access where there would be no certainty over their occurrence, as well as other matters that the HA wished to be dealt with through conditions. The Council has also set out a reasoned justification over why it has concerns with the enforceability of the Service & Development Management Plan (SDMP), including in relation to routeing. Whilst I note comments over whether the HA has seen the SDMP, as the Council state, the enforcement of it would lie with the Council as the relevant Local Planning Authority.
5. A planning decision is a matter of judgement, and the Council is entitled not to accept the advice of a statutory consultee, as long as a case can be made for a

contrary view. This has been satisfactorily achieved by the Council in its reasoned justification that it has set out in its submissions. It has produced sufficient evidence to justify its decision to go against the statutory consultee's recommendation of conditions.

6. With regard to the correspondence between the main parties, the Council did respond to the applicant and this necessitated the submission of the SDMP. It was then for the Council to consider this document in full, when it made its decision. It clearly did that, even if the applicant does not agree with the Council's view on it. It is ultimately the Council who makes that balanced judgment during the course of the planning application in making the determination.
7. Taking into account the above and the PPG, the Council has not prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Nor has it failed to produce evidence to substantiate the reason for refusal on appeal. The Council has thus not acted unreasonably on these counts.
8. I do however find some contradiction in the Council's position as regards the economic business case. It does not seem to be in dispute that the applicant provided more information on this matter during the course of the planning application which concerns the proposal that was for my deliberation, than the planning application that preceded it. Yet the related former development plan policy that concerned this matter only appeared in the reason for refusal for the proposal that is the subject of the appeal.
9. This constitutes unreasonable behaviour in not determining similar cases in a consistent manner. The extent of the costs associated with this issue will be narrow compared to the overall appeal costs because the reason for refusal is clearly centred on highway safety issues and as the economic business case also relates to the benefits of the proposal that have been put forward. However, the applicant would still have incurred some residual expense in rebutting the Planning Officer report on the economic business case and in relation to the former development plan policy that was still in place when the appeal was submitted. To a degree, unnecessary or wasted expense in the appeal process has therefore occurred.

Conclusion

10. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in so far as the Council not determining similar cases in a consistent manner. An award of partial costs is therefore 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 Hambleton District Council shall pay to Mr D Parker, Parker Oak Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the extent set out in this decision related to not

determining similar cases in a consistent manner; such costs to be assessed in the Senior Courts Costs Office if not agreed.

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

Darren Hendley

INSPECTOR