The Planning Inspectorate

Costs Decision

Site visit made on 2 March 2022

by S D Castle BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2022

Costs application in relation to Appeal Ref: APP/K3415/W/21/3284909
The Grange, Church Street, Chasetown, Burntwood WS7 3QL

- 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 Scott Wright for a full award of costs against Lichfield District Council.
- The appeal was against the refusal of planning permission for construction of 2 bedroom bungalow.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expenses in the appeal process.

3. The applicant asserts that, contrary to the advice of officers, the Council has refused permission on the basis of unsubstantiated assertions. The applicant advises that this has caused an unnecessary appeal resulting in wasted expense through the preparation of the appeal and the commissioning of a Flood Risk Assessment and Surface Water Drainage Strategy (FRA).

4. The planning application was recommended for approval and was overturned by Council Members. Councils are not, however, duty bound to accept the recommendations of their officers. It must be recognised that many planning judgments are subjective and require a balanced view. This can quite legitimately result in members not wholly agreeing with officers' recommendations, or coming to a different subjective or balanced decision, taking into account all material considerations.

Flood Risk

5. Whilst I have reached a different conclusion to the Council with regards to the effect of the proposal on flood risk, I have done so with the benefit of a detailed FRA that was not before the Council at the time of its decision. The development introduces built form adjacent to an area identified, both by residents and the Environment Agency, as at high risk to surface water flooding. Such development inevitably has implications for surface water runoff rates and, without appropriate mitigation, has the potential to increase flood risk. As such, given the detailed information of the FRA, including regarding

mitigation and runoff rates, was not before the Council at the time of its decision, I do not find that the Council acted unreasonably in refusing the development to concerns regarding flood risk.

Traffic Movements

6. The Council's assertion that traffic movements associated with the development would harm the living conditions of surrounding occupiers is not supported by any objective analysis. The Highway Authority does not object to the proposal and the effects of construction traffic can appropriately be dealt with by a construction management plan condition. The Council has made vague and generalised assertions about the effect of traffic movements associated with the development on the living conditions of local residents. I therefore find that unreasonable behaviour in this regard has been demonstrated by the Council.

Wasted Expense

7. The PPG sets out that parties in planning appeals and other planning proceedings normally meet their own expenses. The PPG is also clear that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.

8. I acknowledge that submitting an appeal and commissioning an FRA in support of the grounds of appeal represents an unwelcome cost to the applicant. However, whilst I have found that the Council acted unreasonably in relation to its second refusal reason (traffic movements), an appeal would have had to have been lodged regardless in order to challenge the Council's first refusal reason (flood risk). I am not persuaded that challenging the second refusal reason, given the limited nature of the submissions in this regard, has resulted in any demonstrable additional expense for the applicant in the appeal process.

Conclusion

9. For the reasons above, and having regard to all other matters raised, I conclude that unnecessary expense during the appeal process has not been demonstrated. An award of costs is therefore not justified.

S D Castle

INSPECTOR