
Costs Decision

Site visit made on 24 May 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2022

Costs application in relation to Appeal Ref: APP/G2713/W/21/3289607 Tennis Court Lane, Tollerton YO61 1QB

- 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 Ambleside Homes for a full award of costs against Hambleton District Council.
 - The appeal was against the refusal of planning permission for construction of 4no. dwellings and associated works.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 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. Unreasonable behaviour may be procedural and/or substantive.
3. The applicant claims that the Council has acted unreasonably in that it has gone against the advice of its professional officers without good reason and there is no evidence to support/rationalise its objection on the grounds of harm to highway safety.
4. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
5. I appreciate that the pre application advice provided by officers did not raise an objection on highway safety grounds nor was a concern about highways related matters raised by the Council's Planning Consultative Panel. However, such pre-application advice constitutes an informal opinion based on the information submitted and does not prejudice any decision the Council might make subsequently following the submission of a formal planning application.
6. The Council's first reason for refusal relates to a concern about the risk to pedestrians due to the narrow width of Tennis Court Lane and the lack of a footpath, with the traffic generated by the proposed development leading to a conflict with pedestrians. It refers to the relevant policies of the development plan.

7. I have noted the recommendation of the Council's officers which was for approval. The Planning Committee is not duty bound to follow the advice of its officers, as long as its contrary decision is made on planning grounds and clear evidence is provided to substantiate that reasoning.
8. In this case, the Highway Authority response noted that the lane is narrow in the vicinity of the appeal site but concluded that given the small scale of the proposed development, a recommendation for refusal on highway safety grounds would not be appropriate. No concerns were raised regarding the safety of pedestrians.
9. A number of concerns were raised by local residents on the application including the narrow width of the lane and the conflict between pedestrians and vehicles. The Committee Members familiarised themselves with the site and its surroundings, making a visit prior to considering the proposal. Local knowledge can be an important consideration, but alleged harm still requires to be substantiated by clear evidence. The Committee Minutes provide little elucidation of its concerns regarding highway safety matters.
10. The applicant submitted evidence on highway matters with the appeal, which is an understandable response. The Council's appeal submission provides a response to the applicant's appeal statement. Whilst the Council's appeal submission has attempted to substantiate the reason for refusal, it lacks sufficient evidence and analysis to demonstrate that its decision to refuse planning permission was based on reasonable concerns about harm to highway safety.
11. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other relevant considerations, the development proposed should not have reasonably been refused for a reason relating to highway safety with particular regard to pedestrians. Reason for refusal one therefore constitutes unreasonable behaviour contrary to the guidance in the PPG and the applicant has been faced with the unnecessary expense of addressing this.
12. Whilst the second reason for refusal relates to a concern about the living conditions of future occupiers of the proposed development, this relates to a lack of a completed planning obligation. I have no reason to doubt that the relevant planning obligation would have been completed in the event of the Council granting planning permission, as demonstrated by the submission of a completed and signed unilateral undertaking as part of the appeal, which the Council has confirmed would deal with the matters raised within its second reason for refusal. The applicant would have been faced with the expense of addressing this matter irrespective of the appeal.

Costs Order

13. 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 Ambleside Homes, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in arguing against the Council's reason for refusal number one; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. 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.

F Wilkinson

INSPECTOR