



Costs Decision

Site visit made on 7 June 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2022

Costs application in relation to Appeal Ref: APP/Z2315/W/21/7287521 Butchers Farm, Ormerod Street, Worsthorne, Lancs. BB10 3NU

- 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 Geoff Eccles for a full award of costs against Burnley Borough Council.
 - The appeal was against the refusal of planning permission for 28 no. dwellings following demolition of farm buildings.
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Decision

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

Reasons

2. Paragraph 30 of the Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Local planning authorities are at risk of an award of costs against them where there is evidence of 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. The applicant's concerns relate to the level of communication from the Council in the run-up to taking its decision with particular regard to measures to minimise water and energy consumption, and the consideration of opportunities for on-site energy supply from renewable and low-carbon sources. The appellant also contends that these are matters which could have otherwise been dealt with through the use of planning condition/s and the Council's failure to do so was unreasonable.
4. The Council's appeal statement refers to a request for additional information from the applicant in relation to the development's energy efficiency credentials. A subsequent offer to improve on the 2013 Building Regulations (BR) standards by 10% was reported to the Development Control Committee (DCC). Apart from those comments, there is little evidence before me of the extent or content of any communication in that regard. I am therefore unable to firmly conclude that a lack of cooperation on the Council's part was tantamount to unreasonable behaviour.
5. However, as a matter of concern raised by the Council, and with limited information provided in relation to the relevant requirements in Policy SP5 of

the Burnley Local Plan, I find the Council was entitled to find against the proposal on the basis of a strict conflict with the development plan.

6. I note the applicant's assertion that deferral of the application would have allowed the matter to be resolved, however, there is little evidence before me to indicate that this was requested by him. In the interests of expediency, it is not incumbent on the Council to delay decision making.
7. It was nevertheless open to the Council to consider whether the failure to meet the minimum requirements of the policy could be made acceptable through the use of a planning condition/s, as suggested in its recommendation report. However, it was a matter of planning judgement, having regard to all relevant issues, as to what weight to give to the requirements in the development plan against the appellant's offer of energy performance improvement.
8. As a general proposal lacking any substantive detail, as I have found, the offer did not necessarily address the specific requirement at criteria 1c) of Policy SP5. Furthermore, as the methods of on-site energy generation might include a necessity for additional infrastructure or buildings beyond the scope of a minor amendment to the scheme, a broader condition requiring such measures would potentially fail the test of reasonableness.
9. For the above reasons, and despite my own finding as a consequence of a subsequent update to the Building Regulations standards for energy efficiency, I find that the approach of the Council was not unreasonable in the particular circumstances of the case.
10. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is not justified.

R Hitchcock

INSPECTOR