
Costs Decision

Site visit made on 29 June 2022

by David Wallis BSc (HONS) PG DipEP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th July 2022

Costs application in relation to Appeal Ref: APP/L2820/W/21/3276527 Manor House, Gold Street (land rear of), Desborough

- 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 Lee (Snowdon Homes Ltd) for a full award of costs against Kettering Borough Council.
 - The appeal was against the refusal of planning permission for re-development of site to create 40 no. dwellings with access, parking and associated works.
-

Decision

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

Reasons

2. The Planning Practice Guidance 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 appellant submits that unnecessary expense has been incurred as the Council has withheld planning permission without substantive reasons for doing so. The Council are said to have no grounds upon which to have refused the appeal development on highway matters, and that insufficient weight has been given to key aspects of the proposal's merits, namely that the proposal is for a scheme solely of affordable housing units on brownfield land.
4. I note that the officer's recommendation was overturned by planning committee, which is an acceptable in principle provided that the reasons for doing so are robust and substantiated.
5. In relation to the balance on social infrastructure, the matter of weight is that for a decision-maker to apportion. It is a difference of judgement as to whether the provision of a purely affordable housing scheme outweighs the non-provision of contributions for other social infrastructure. Notwithstanding my own findings on the planning merits of the case, I consider that the Council is reasonably justified in coming to a different view to that of the appellant following a balancing exercise and taking into account social infrastructure needs. The apportionment of weight in favour of a refusal of planning permission does not amount to unreasonable behaviour.
6. The first reason for refusal is not, however, as robust in my view. Specifically, it cites a position expressed by Northamptonshire Highways back in 2018,

despite the fact that the highways authority raised no objection to the proposed development on two separate occasions. Whilst the lack of an objection from a consultee does not prevent a Council exercising its own discretion against the recommendation of its officers, good reasons would need to be provided for doing so. The Council's appeal statement provides no such reasoning, conceding that no additional evidence is provided for the first reason for refusal, particularly in view that the highways authority has written to the appeal reinforcing a position of no objection. The appellant's submissions to the appeal in this regard have, therefore, been unchallenged.

7. For this reason, the efforts by the appellant in resisting this first reason for refusal have been carried out with unnecessary expense incurred. On this discrete matter, the appellant is justified in seeking an award of costs.
8. I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

9. 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 Kettering Borough Council shall pay to Snowdon Homes Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to the highways-based reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Kettering Borough 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.

David Wallis

INSPECTOR