
Costs Decision

Site visit made on 10 May 2022

by Diane Cragg DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2022

Costs application in relation to Appeal Ref: APP/E2001/W/21/3288569 Land off Selby Road, Holme on Spalding Moor, East Yorkshire

- 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 East Riding of Yorkshire Council for a full award of costs against Mr Tim Leighton.
 - The appeal was against the refusal of planning permission described as 'outline planning permission is sought for the provision of up to 42 no. dwellings'.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only 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 Council is applying for costs on substantive grounds. The PPG explains that the right of appeal should be exercised in a reasonable manner and that an appellant is at risk of an award of costs on substantive grounds if an appeal has no reasonable prospect of succeeding.
4. This may occur where either the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.
5. It may also not have a reasonable prospect of succeeding when the appeal follows a recent appeal decision in respect of the same, or a very similar development on the same, or substantially the same site where an Inspector decided that the proposal was unacceptable, and circumstances have not materially changed in the intervening period.
6. It was not unreasonable given the 5 year housing land supply position for the appellant to make a resubmission to the Council. The Council had the discretion to decline to determine the application, but it did not do that.
7. In relation to the appeal proposal, the appellant's arguments are not without merit, and it was not intrinsically unreasonable to lodge an appeal. Issues relating to character and appearance and the weight to be attached to other

material considerations are largely subjective and matters of judgement. While I have dismissed the appeal, in my view, the appellant provided adequate supporting evidence in the statement of case and final comments which identified a basis on which an alternative conclusion could have been reached.

8. The Council contend that it has been established through an earlier appeal¹ that development outside the limits of Holme on Spalding Moor is unacceptable in principle. However, the appeal scheme is not the same, or substantially the same site as the earlier appeal.
9. Further, whilst in my determination of the appeal, I did not find the appellant's evidence convincing, it nonetheless considered the conclusions of the previous Inspector in the earlier appeal alongside other subsequent appeal decisions. This was not an unreasonable approach.
10. Overall, based on the evidence before me, I find that the appellant was entitled to make the appeal. In addition, whilst the appellant's case was ultimately unpersuasive, I do not agree that it had no prospect of success.
11. Consequently, I conclude that unreasonable behaviour has not been demonstrated. Accordingly, it follows that the Council has not been put to unnecessary or wasted expense in the appeal process. Therefore, the application for a full award of costs is refused.

Diane Cragg

INSPECTOR

¹ APP/E2001/W/16/3165880