



Costs Decision

Site visit made on 14 June 2022

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 11th July 2022

Costs application in relation to Appeal Ref: APP/W0734/D/22/3298425 5 Barnack Avenue, Middlesbrough TS7 8QB

- 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 & Mrs Paul and Donna Robinson for a full award of costs against Middlesbrough Borough Council.
 - The appeal was against the refusal of planning permission for a proposed single storey extension at front and new pitched roof.
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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 (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 in the context of an application for an award of costs may be either procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal.
3. I allowed the appeal and granted planning permission for the development which there is no dispute, is the same as development approved by the Council in 2019 (Ref 18/0739/FUL). The applicant asserts that the Council has acted unreasonably because of their refusal of it when it was resubmitted; the lack of an explanation as to why a different decision has been reached; and changing a decision without visiting the application site.
4. The change from an approval to a refusal of the same scheme which resulted in this appeal was not in the context of any obvious policy changes that have been drawn to my attention. The officer report from when the previous decision was made by the Council refers to Policies DC1 and CS5 of the Middlesbrough Core Strategy¹. These were still decisive when I made my decision. Furthermore, the report explains that although the Council's Urban Design SPD² seeks to avoid front extensions, the proposal at that time was considered acceptable.
5. The later officer report that resulted in refusal of the appeal scheme lists within the planning history, the previous planning permission as having lapsed. Within

¹ Middlesbrough Local Development Framework, Core Strategy adopted February 2008

² Middlesbrough's Urban Design Supplementary Planning Document, adopted January 2013 (SPD)

the body of the report, there is no reasoning provided regarding why, given the same policy background, the development is no longer acceptable. I would expect such a change in decision to be rationally explained. The PPG gives as an example of unreasonable behaviour "failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances." That is the situation in this case.

6. Furthermore, the Council's report provides no analysis of why a different decision was being made. Even though Covid-19 restrictions may have affected the Council's procedures for carrying out site visits, the similarity of the previous scheme was clearly a significant material consideration that has not been properly considered by the Council. Their report was in these respects vague and unsupported by objective analysis.
7. The Council therefore acted unreasonably by refusing the application-and preventing or delaying a development which clearly should have been permitted.
8. It is also necessary for the applicant for costs to demonstrate that unreasonable behaviour has resulted in wasted expense in the appeal process. Although these have not been detailed, I am satisfied that the applicants have incurred the expense of employing professionals to give advice and then pursue the appeal.

Conclusion

9. I therefore find that unreasonable behaviour, resulting in unnecessary or wasted expense as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

10. 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 Middlesbrough Borough Council shall pay to Mr & Mrs Paul and Donna Robinson, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the submission of this appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Middlesbrough 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.

M J Francis

INSPECTOR