
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: 20 July 2022

Costs application in relation to Appeal Ref: APP/Z4718/W/21/3289729 Land to the rear of St Luke's Bierley Marsh

- 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 Stephen Owens of Owens Developments Ltd for a partial award of costs against Kirklees Council.
 - The appeal was against the refusal of planning permission for 5 dwellings in two blocks – one 4 terraced houses, one single bungalow type house.
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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 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 failed to be positive and proactive in its engagement on the application and that it should grant planning permission on developable sites where it can be shown that the substantial and specific benefit to the local community clearly outweighs the small degree of harm caused. The applicant contends that the Council's approach has resulted in delays in reaching a decision which has incurred additional costs.
4. 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.
5. Reason for refusal one relates to a failure to demonstrate that the open space as designated in the Kirklees Local Plan Strategies and Policies, adopted 2019, cannot be used for the purposes of open space, sport or recreation and that the land is no longer required for such uses. Council Officers considered that sufficient evidence was provided to outweigh the policy conflict. However, the submitted information indicates that the planning committee gave less weight to the evidence, which, as decision maker it was able to do, and therefore came to a different conclusion.
6. Reason for refusal two relates to the effect of the proposed development on the character and appearance of the area. This reason for refusal is a matter of

judgement. The reason for refusal explains why the proposed development was considered to be unacceptable and is framed within the context of the development plan.

7. The PPG states that where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application. I find this to be the case here, notwithstanding the fact that I have come to a different conclusion to the Council regarding the acceptability of the proposal.
8. In addition, the PPG states that an award of costs cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission.
9. For the above reasons, I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated.

F Wilkinson

INSPECTOR