



Costs Decision

Site visit made on 01 June 2022

by Kim Langford Tejrar LLB (Hons) BSc (Hons) PGDIP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2022

Costs application in relation to Appeal Ref: APP/N3020/D/21/3286329 27 Longdale Lane, Ravenshead, Nottingham NG15 9AB

- 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 C Young against the decision of Gedling Borough Council.
 - The appeal was against the refusal of planning permission for 'Detached garage'.
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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 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 either procedural, relating to the process, or substantial, relating to the issues arising from the merits of the appeal.
3. Mr C Young (the Appellant) alleges that the Local Planning Authority (LPA) behaved unreasonably in that it:
 - Did not determine the application in a timely manner and then refused the application, thereby having prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations,
 - Failed to produce evidence to substantiate each reason for refusal,
 - Did not determine similar cases in a consistent manner; and,
 - Failed to engage positively with the applicant.
4. The LPA did not determine the application within the statutory timeframe and did not have an agreement in place with the Appellant. The LPA has made no specific response in respect of this. However, the LPA maintains that the scheme would have had a detrimental impact on the character and appearance of the appeal site and surrounding area, contrary to development plan policy and therefore it did not delay a 'development which should clearly have been permitted'.
5. Whilst I have reached an alternative view on the effect of the scheme and its compliance with development plan policy, an assessment as to the effects of a scheme is a matter for the decision maker. As such, the LPA was entitled to

- reach its own conclusion in the first instance, based on substantiated reasoning.
6. The Appellant argues that the LPA did not substantiate its reasons for refusal on two bases:
 - There are several similar developments in the vicinity of the area, which were disregarded by the LPA; and,
 - Notwithstanding the point above, that the LPA did not fully assess the character of the area in that it made vague generalisations and did not carry out a detailed landscape assessment.
 7. In response, the LPA submits that those examples of nearby development are not comparable to the appeal scheme in that they vary in scale, plot size, siting and design, and that they were granted planning permission under now superseded policies.
 8. Each application must be considered on its own merits, although the comparability of similar schemes is relevant to ensuring a consistency in decision making (addressed below). However, the LPA appears to have conflated the requirement to consider the detail of alike schemes with making its assessment of the site and local character. The level of landscape assessment required for each proposal should be proportionate to the nature of the scheme and as such, the LPA would not need to produce a detailed landscape assessment for this scheme. Indeed, were such an assessment required, the onus of producing it would be on the Appellant. However, in its limited assessment of the site and its surroundings, the LPA has entirely disregarded elements of the existing built context of the site and its surroundings, despite those elements forming an integral part of the character of the area. This includes, but is not limited to, its approach to the examples of like development in the vicinity. As such, the LPA has made a vague and generalised assessment of the character of the local area which is not reflective of its actual character. Had the LPA taken into account the built and spatial characteristics of the area, it would necessarily have reached an alternative conclusion.
 9. For these reasons, I find that the LPA did both delay and prevent development which should clearly have been permitted and it failed to produce evidence to substantiate each reason for refusal.
 10. In respect of consistency in decision making, the weight to be given to a material consideration is a matter for the decision-maker and it is necessary for the decision-maker to have identified in its reasoning the weight to be given to that consideration and to have weighed it in the planning balance. The LPA did assess the comparability of the schemes, and it justified its departure in approach either due to differences between the scale and design of the schemes in relation to their plot (rather than the overall character of the area) or because the other developments had been permitted under superseded policies. Had the LPA taken into account the wider character of the area in this assessment, it would have likely reached an alternative conclusion, as set out above. In any case, the policy context is a measure as to the comparability of the circumstances and is a factor in indicating the weight to be attached to them as considerations, rather than simply a reason to disregard those developments as considerations. In fact, the policy context for the example

developments was no more permissive than the current policies. For this reason, I find the LPA was inconsistent in its decision making.

11. The Appellant also contends that the LPA failed to positively engage during the application process. The LPA had limited contact with the Appellant. When it did, the Planning Officer for the application was unable to discuss their likely delegated decision or committee recommendation in meaningful terms, because it was subject to discussion at a meeting which the Officer did not attend. As such, the Appellant received a refusal of planning permission without any opportunity to discuss and resolve the issues with the LPA. This is unreasonable behaviour on the part of the LPA. Whilst the nature of the LPA's reasons for refusal were such that they could not have been overcome by way of conditions or negotiation, had the LPA had regard to the Appellant's representations, it may have taken a different approach in respect of the other issues addressed above.
12. In respect of conditions in particular, the LPA contended that the harm it had identified to the character of the area as a result of the scheme could not have been effectively mitigated by way of a planning condition requiring the retention of the front boundary hedge, which would screen the development. Its case was not that the screening would be insufficient, but that the use of a condition would not meet the necessary tests for conditions. A landscape plan condition which requires either planting or retention of existing soft landscaping in accordance with an approved scheme is a common form of planning condition which meets the necessary tests. As such, the LPA's reasons for refusal could have been overcome by way of a planning condition.
13. For these reasons, I conclude that the LPA has behaved unreasonably, thereby causing the Appellant unnecessary and wasted expense in the appeals process.

Costs Order

14. 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 Gelding Borough Council shall pay to Mr C Young, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Gelding 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.

Kim Langford Tejrar

INSPECTOR