

Costs Decision

Site visit made on 11 July 2022

by E Worthington BA (Hons) MTP MUED MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2022

Costs application in relation to Appeal Ref: APP/N2739/W/22/3291919 The Nelson Inn, Ousegate, Selby, YO8 8BL

- 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 Miss Jackie Howley for a full award of costs against Selby District Council.
 - The appeal was against the refusal of planning permission for 'Full planning permission for the erection of new build block of self-contained apartments with associated undercroft car parking on vacant ground adjacent to The Nelson Inn, 134 Ousegate, Selby'.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. The National Planning Practice Guidance (the Guidance) advises that where a party has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
 3. It also states that one of the aims of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, and not to add to development costs through unavoidable delay.
 4. Examples of behaviour which may lead to a substantive award of costs against the local planning authority are set out in the Guidance. These include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
 5. The appellant considers that the Council has failed to produce evidence to substantiate each reason for refusal on appeal and refers to wasted expense in the whole appeal process due to the Council's vague, generalised and unsubstantiated reasons for refusal.
 6. In particular the appellant is concerned that the first reason for refusal does not specify particular development plan policies or the relevant paragraphs of the National Planning Policy Framework (the Framework) or the Guidance.
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7. I acknowledge that the first reason for refusal on the decision notice relating to flood risk refers only to the overarching principles set out in the Selby District Core Strategy (CS), and to chapter 14 of the Framework and the Guidance generally.
8. That said, the officer's report sets out a list of the relevant CS policies. These include CS Policies SP2 and SP15 both of which deal with issues of flood risk. The officer's report also refers to specific paragraphs in the Framework (paragraphs 162 and 163 for example) which deal with the Sequential Test. Additionally the Council's appeal statement considers the relevant CS policies and objectives at paragraph 4.8 and in particular cites Policies SP2 and SP15. Again the relevant paragraphs of the Framework in relation to flood risk are also discussed at paragraph 4.10 of the Council's appeal statement. As such, I find that the Council has produced sufficient evidence in this regard to substantiate this reason for refusal on appeal.
9. As set out in my Appeal Decision, I agree with the Council's position with regard to the Sequential Test, and have dismissed the appeal on this basis. Thus I am content that it has explained the impact of the proposal and substantiated its reason for refusal in this case. For the reasons set out in my Appeal Decision I have also found that the Council has explained why site SEL-78 is reasonable and available. Accordingly, I am not convinced that the Council has relied upon vague, generalised or inaccurate assertions about the proposal's impacts which are unsupported by any objective analysis.
10. Another example of unreasonably behaviour set out in the Guidance is refusing planning permission on a ground capable of being dealt with by conditions. This risks an award of costs where it is concluded that suitable conditions would enable the proposed development to go ahead.
11. In terms of the second reason for refusal, the appellant considers that the matter of biodiversity net gain could have been addressed via a planning condition. I am aware that the Council did not raise the issue of biodiversity net gain with the appellant at the time of the application and no responses were received from any consultees on this matter.
12. Paragraph 55 of the Framework is clear that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through use of conditions or planning obligations. Paragraph 56 also indicates that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
13. The Council advises that it did not enter into discussions with the appellant regarding biodiversity net gain prior to the determination of the application due to the proposal's unacceptability in principle in relation to flood risk. As set out in my Appeal Decision, I have also found the proposal to be unacceptable in this regard. Thus I agree that to do so would have put the appellant to unnecessary additional work in this case.
14. Whilst the appellant has provided further information as part of the appeal to address the matter of biodiversity net gain (a landscaping scheme and a biodiversity net gain calculation including a baseline habitat plan and landscape

enhancement plan), this was not before the Council at the time of the determination of the planning application.

15. Rather, the information submitted with the application was limited, and I am not convinced that it would have provided the Council with sufficient evidence to rely on a condition requiring the submission of further details. To do so would assume that satisfactory details regarding biodiversity net gain could be forthcoming. However, at the time of determining the application the Council had been provided with no comfort as to the likelihood of this being the case.
16. I appreciate that in light of the evidence that has subsequently been provided the Council is now satisfied that its concerns have been met in this regard. As set out in my Appeal Decision, I also concur with these findings in relation to the second reason for refusal. Nevertheless, I am not convinced that that Council had sufficient evidence at the time of its determination of the application to be confident that this was necessarily a ground capable of being dealt with by a condition, or that any such condition would be likely to meet the tests set out in the Framework.
17. Thus I am satisfied that the second reason for refusal citing insufficient information in terms of biodiversity net gain was justified and was not capable of being dealt with by a condition. This being so, I am not persuaded that the Council has behaved unreasonably in this regard in relation to the appeal.
18. Taking all these factors into account, for the reasons given, the appeal could not have been avoided, and the Council has not prevented or delayed development which should clearly have been permitted, having regard to the development plan, national policy and any other material considerations.
19. I therefore conclude that the appellant's costs in mounting the appeal were not unnecessarily incurred. Consequently, the application for a full award of costs is refused.

E Worthington

INSPECTOR