



Costs Decision

Site visit made on 16 August 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 September 2022

Costs application in relation to Appeal Ref: APP/A4710/W/22/3294009 Land west of 3 Quarry Court, Rastrick, Brighouse HD6 3LP

- 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 Marshall Homes Ltd for a full award of costs against Calderdale Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for 4 detached dwellings including new access road, garages, gardens and external works.
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Decision

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

Reasons

2. Paragraph 30 of the Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Local planning authorities are at risk of an award of costs against them where there is evidence of 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. The applicant's concerns relate to the Council's approach to the consideration of highway matters and its failure to request further detail in relation to an ecological assessment of the site.
4. Following a previous refusal of planning permission for a development of 6 dwellings on the site, the applicant entered into pre-application discussions with various officers of the Council. This resulted in an independent road safety audit being carried out at some expense to the applicant. The document was used to inform further discussions around the matter of highway safety and provide some assurance that any works required under s278 of the Highways Act 1980, would not be objectionable to the Highway Authority (in this case also Calderdale MBC).
5. The subsequent planning application Ref. 21/00471/FUL for 4 dwellings was refused permission by the Council on the basis of highway safety once more. The applicant contends that the Council did not provide sufficient justification or evidence to support its decision in this regard. However, the report clearly sets out the case officer's concerns as to how road safety might be affected by the proposed development. Whilst not determinative, the report considered the

views of the Council's highway advisor. Those views have subsequently been used and explained to defend the Council's stance in conjunction with the appeal. Although the applicant may disagree with the highway advisor's 'intransigent' stance, it is the wider Council's own interpretation of that advice, and determination as to the weight to attribute to it as a matter of planning judgement, that resulted in its formal decision.

6. Furthermore, I find the stated reason for refusal provided the clarity and precision required by Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 to sufficiently explain the Council's decision in relation to highway safety concerns. This view has been substantiated such that, despite relatively low traffic generation, I have also found cause for highway safety concerns.
7. Whilst I recognise that pre-application discussions are generally beneficial and encouraged by the National Planning Policy Framework, any views provided outside of the formal determination process are not binding. Regardless of whether they are given by senior officers, they are not a formal determination of the Council. I find that the Council's decision based on relevant matters to the determination of the planning application was not unreasonable.
8. The statutory requirement for the conservation of protected species and the aim of achieving biodiversity net gain are well established in statute and planning policies. Although an ecological assessment was not required in conjunction with earlier proposals, I note the applicant's Design Statement indicates that the site had previously been cleared. It is therefore entirely possible that an earlier site assessment could conclude that it would be largely devoid of wildlife or other biodiversity value.
9. However, in the light of the Council's consistent finding in relation to highway matters, the imposition of an additional cost requirement associated with providing a site ecological assessment within the relatively limited timeframe for the determination of a planning application that was unlikely to be granted, might have been the subject of a justifiable complaint to the Council.
10. As a duty for a decision-maker under Regulation 9 of the Conservation of Habitats and Species Regulations 2017, there would be a requirement to address the ecological implications of the development on an overgrown site in any case. Following the advice to provide information on biodiversity in the PPG¹, this would inevitably incur costs. Accordingly, in my view, the Council's approach was not unreasonable in the circumstances of the case.
11. Notwithstanding that I have subsequently found in favour of the development, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

R Hitchcock

INSPECTOR

¹ Paragraph: 018 Ref ID: 8-018-20190721