

Costs Decision

Site visit made on 18 October 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 November 2022

**Costs application in relation to Appeal Ref: APP/E2340/W/22/3296035
Land opposite The Barn, Ben Lane, Barnoldswick, Lancashire BB18 6HR**

- 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 Simpson Homes Ltd. for a full award of costs against Pendle Borough Council.
 - The appeal was against the refusal of the reserved matters of appearance, landscaping and layout for a development of 14 houses and access road.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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. In this case the Council's officer had recommended the application for approval. Whilst the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council must clearly demonstrate why a proposal is unacceptable on planning grounds and provide clear evidence to substantiate that reasoning.
4. Although the Council's Decision Notice 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, I concur with the applicant's assertion that the Council subsequently sought to defend its stance through vague, generalised or inaccurate assertions about the proposal's impact which were unsupported by any objective analysis.
5. In relation to the effect on the urban fringe, the Council's case is confined to a single paragraph. The statement fails to adequately explain how the design and layout of the development would cause harm to the existing character of the urban fringe. It is unclear from the submissions as to what aspects of the design were considered inappropriate and harmful adjacent to the open countryside.
6. In relation to the effects on neighbours, commentary is limited to a single sentence and fails to elucidate where it considered that harm would arise or

from which specific part of the development it would result. Although I have found that adverse effects on privacy would occur, as identified by neighbouring residents, I find the supporting evidence provided by the Council in relation to this matter was ambiguous at best.

7. In relation to foul drainage, claims are made as to the potential adverse effects of the development. However, these are not supported by evidence to defend the conclusion reached in the Council's Decision Notice. The submissions provide clarification on recent improvements made to avoid drainage surcharging downstream of the proposed connection. Whilst I recognise that sewers may suffer infiltration from groundwater, there is little to demonstrate that the proposal would effectively result in a by-pass of those recent installations. It was not therefore clearly demonstrated that flooding or pollution incidents would arise from the proposed foul connection.
8. Accordingly, although I have subsequently found against the development, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore justified.

Costs Order

9. 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 the Pendle Borough Council shall pay to Simpson Homes Ltd. the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to the 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.

R Hitchcock

INSPECTOR