
Costs Decision

Hearing held 22 – 23 September 2022

Site visit made on 22 September 2022

by Jonathan Price BA(Hons) DMS DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 November 2022

Costs application in relation to APP/T2405/W/20/3264047 Land off Sycamore Street, Blaby, Leicestershire LE8 4FX

- 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 Martin McDonagh for a partial award of costs against Blaby District Council.
 - The appeal was against the refusal of planning permission for use of land for the stationing of caravans for residential purposes for 2 no. Gypsy pitches, together with the formation of hardstanding and utility/dayroom ancillary to that use.
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Decision

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

Reasons

2. The application for an award of costs was made verbally at the Hearing. The Council were given time to provide a written response and the appellant the opportunity to comment on this.
3. Advice over the award of planning appeal costs is set out in the Government's Planning Practice Guidance (PPG). It states the established premise that parties to an appeal normally meet their own costs. However, 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.
4. Unreasonable behaviour in this context may be procedural, relating to the appeal process, or substantive, relating to issues arising from the merits of the appeal. In this application the case is made that the Council had acted unreasonably over the substance of its decision.
5. Paragraph 50¹ of the PPG advises that where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs. It continues that where permission is refused for a proposal 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.

¹ Paragraph: 050 Reference ID: 16-050-20140306 Revision date: 06 03 2014

6. The unreasonable behaviour related to the Council continuing to defend its reasons for refusal numbers 3 and 4. Reason number 3 was over a failure to demonstrate a layout that provides sufficient space for vehicles towing caravans to stand clear of the highway and manoeuvre within the site so that they can exit in a forward direction, contrary to the Leicestershire Highways Design Guide and detrimental to highway safety. Reason number 4 was over a failure to satisfactorily demonstrate through a site-specific Flood Risk Assessment (SFRA) that the proposals would be safe in terms of fluvial and surface water flood risk and how this risk would be managed and mitigated against for the lifetime of the development.
7. The unnecessary or wasted expense in the appeal process, supporting the partial award of costs application, related to various matters. These were having to deal with flooding and highways in the appeal statement, producing a revised SFRA, with its author preparing for and attending the event, and the costs incurred through the appellant's leading agent attending a consequential second Hearing day.
8. This costs application refers to paragraph 049² of the PPG and the types of behaviour listed that may give rise to a substantive award against the Council. Those relied on relate to a failure to produce evidence to substantiate each reason for refusal, vague, generalised or inaccurate assertions about a proposal's impact, refusing planning permission on a planning ground capable of being dealt with by conditions and the Council not reviewing their case promptly following the lodging of an appeal.

Highways Reason

9. At the Hearing the appellant confirmed that the existing indicative layout did not provide the 15m set back distances required by Leicestershire Highway Design Guide. In providing this set back, the Council were concerned over the resulting loss of roadside hedging to provide the necessary visibility for this. However, the refusal reason is related to harm to highway safety not character and appearance. Although the local highway authority had not recommended refusal, the Council's concern over the layout was a reasonable one and typical of the kind of issue that benefits from discussion at a Hearing. This discussion informed me of the fact that touring caravans could be manoeuvred by hand, with some having built-in motorised assistance.
10. I do not consider the Council were being unreasonable in choosing to defend this reason, which provided helpful discussion at the Hearing. I am not persuaded that this matter was the cause of unnecessary or wasted expense in the appeal process. The appellant had not been required to fund any specialist highways evidence and avoiding discussion of this matter would have been insufficient to avoid the Hearing running to a second day. Furthermore, the considerable public interest in this case included matters of highway safety that needed to be aired at the event.

Flood Risk

11. With regard to flood risk, I agree entirely with the Council that this remained an issue of real concern, given the appeal site's position directly adjacent to a water course and high risk flood zones, the fact caravans are categorised as

² Paragraph: 049 Reference ID: 16-049-20140306 Revision date: 06 03 2014

highly vulnerable to flood risk, the uncertainty caused by the sudden truncation of the flood risk zones shown on the Environment Agency's on-line maps, anecdotal evidence of flooding along Sycamore Street in this location and the appellant's reliance on secondary information sources due to the allegedly prohibitive cost of modelling flood risk at this site.

12. The revised SFRA was provided a few weeks prior to the Hearing at the appellant's own volition and I accepted this as late evidence. It remained a matter which required discussion at the Hearing and justified the presence of its author as an expert witness. I am not satisfied the Council acted unreasonably in respect to this matter nor that the appellant was put to unnecessary or wasted expense as a consequence.

Conclusion

13. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, the application for a partial award of costs is refused.

Jonathan Price

INSPECTOR