
Costs Decision

Site visit made on 15 November 2022

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 December 2022

Costs application in relation to Appeal Ref: APP/D2320/W/22/3300113 Land to the Rear of 13-16 Spinners Close, Coppull

- 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 Christopher Pugh (Tatton Estates) for a full award of costs against Chorley Borough Council.
 - The appeal was against the refusal of planning permission for the erection of a building comprising 4no. apartments and a building comprising 2no. bungalows with associated parking and landscaping.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. Paragraph 049 of the Planning Practice Guidance offers some examples of unreasonable behaviour by local planning authorities. For the purposes of this application, these include: (1) 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; (2) failure to produce evidence to substantiate each reason for refusal on appeal; (3) and/or vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. Refusal reason 1 on the decision notice states that the proposed development would result in the partial loss of an area of public open space and would worsen an existing deficit of natural/seminatural greenspace in Coppull. This is largely correct, as Coppull does have a deficit of designated Open Space (OS) as confirmed in both the Central Lancashire Open Space Assessment Report (OSAR) (February 2019) and the Chorley Council Open Space Study Standards Paper (OSSSP) (February 2019).
5. However, both the OSAR and OSSSP divide the area into smaller analysis areas, of which Chorley Central, where the appeal site lies, would retain a suitable amount of OS. This was explained in the officer report and the Council has erroneously concluded that the area would be deficient in this respect.

6. Turning to refusal reason 3, the ecological assessment submitted with the planning application concluded there would not be any harmful effects because of the proposal, which would create a net gain of biodiversity. This was agreed with the Council's ecological consultee.
7. Although the committee is entitled to go against the advice of its planning officers and technical experts, any reasons for doing so should be substantive and clear. This evidence is not substantiated in the committee minutes provided with the appeal and through the lack of an appeal statement from the Council with regards to both refusal reasons 1 and 3.
8. Refusal reason 2 relates to the impact of the loss of trees on the character of the area and setting of the reservoir. While the Council's tree officer agreed with the Arboricultural Impact Assessment submitted with the planning application insofar as the trees were of minimal arboricultural value, they concluded that the trees do offer amenity and landscape value. The officer report then concluded that the loss of these tree was acceptable.
9. Establishing whether the trees make a valuable and positive contribution to the character of the local area is subjective. In this regard, the committee were entitled to form their own judgment on this matter. They disagreed with the assessment and concluded that their loss would be harmful. Again, there is limited supporting information. However, the refusal reason was clear and concise, and the relevant policy of the development plan was cited.
10. In my appeal decision I have agreed with the Council's decision with regards to reason for refusal 2, but not 1 and 3. As such, it does not follow that the development proposal should clearly have been permitted or has been prevented or delayed unnecessarily and I disagree with this ground for the costs application.
11. However, the supporting information is vague and makes generalised assertions about the proposal's impact. Moreover, the Council did not provide any evidence with the appeal other than to repeat their suggested conditions were permission to be granted. Taking these matters into account, I regard the Council's behaviour in relation to these matters to have been unreasonable and I agree with the second and third grounds for the costs application.
12. This constitutes unreasonable behaviour contrary to the guidance in the PPG. However, I must also consider whether the Council's unreasonable behaviour has meant that the applicant has incurred any unnecessary costs or wasted expense. The applicant has had to defend reasons for refusal at appeal, which necessitated appointing a consultant to prepare an appeal statement to accompany the appeal. Accordingly, I find that the applicant has incurred unnecessary expense in rebutting these unsubstantiated reasons for refusal.
13. I therefore conclude that, despite the Council's unreasonable behaviour described above, the applicants' costs in mounting the appeal were not unnecessarily incurred overall. Consequently, the application for a full award of costs is refused. However, I find that unreasonable behaviour resulting in unnecessary and wasted expense has been demonstrated in relation to additional information regarding the matters above, and on this basis a partial award of costs is justified.

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 Chorley Borough Council shall pay to Mr Christopher Pugh (Tatton Estates) the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in addressing the first and third reasons for refusal only, such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Chorley 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.

C McDonagh

INSPECTOR