



Costs Decision

Site visit made on 15 November 2022

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 December 2022

Costs application in relation to Appeal Ref: APP/V2635/W/22/3292992 Land West of 23 to 37 and North and West of 52 Benns Lane, Terrington St Clement, Kings Lynn PE34 4JY

- 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 FGSPV 3 Ltd for a full award of costs against King's Lynn and West Norfolk Borough Council.
 - The appeal was against the refusal to grant consent, agreement or approval to details required by a condition of a planning permission for the demolition of existing structures and for the erection of 43 dwellings (Use Class C3) with means of site access from Benns Lane, the details for which approval was sought are appearance, landscaping, layout and scale.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 049¹ of the PPG states that examples of unreasonable behaviour by local planning authorities include preventing or delaying development which should clearly be permitted and refusing planning permission on a planning ground capable of being dealt with by conditions.
4. The applicant considers that the reason for refusal, against officer advice, was not substantiated in any meaningful way and was therefore substantively unreasonable. It also considers that the Council was unreasonable in not raising the issue of layout sooner and that the Committee's concerns could have been adequately resolved through the imposition of conditions. The Council highlights that the planning committee is not required to follow officer advice and contends that as amended plans were provided, safety improvements were needed or necessary.
5. The planning committee was entitled to raise concern regarding the layout of the site at the point when layout was being considered through the reserved

¹ Appeals Paragraph: 049 Reference ID: 16-049-20140306

matters application. It is also not obliged to follow the advice of their officers. It therefore was not unreasonable that the relationship between the play area and the attenuation pond was not raised sooner.

6. However, the reason for refusal is not precise. It alleges that the proximity of the play area to the attenuation pond would fail to provide a safe and high quality layout. The Committee minutes, reason for refusal and appeal statement are vague as to the harm there would be to safety.
7. At the time of the application, fencing was shown around both the play area and alongside the footpath around the attenuation pond. Two gates were to be provided to the play area. While these were amended during the appeal process, this is a matter which could have been resolved through the imposition of a condition.
8. The Council has also put forward that costs could have been avoided by resubmitting the application rather than an appeal. However, the appellant was entitled to take the refusal as the Council's considered position on the matter and to appeal when it disagreed with that position.
9. The applicant also considers the Council behaved unreasonably, both substantively and procedurally, in that its statement of case effectively sought to introduce new reasons for refusal after the decision had been taken and that this incurred additional expense to rebut those concerns.
10. In my view, the Council's behaviour was unreasonable in citing concerns with regard to traffic, drainage, flood risk, local infrastructure and biodiversity. However, I find no wasted expense in this regard as the appellant will have been aware that those issues were addressed through the outline permission and therefore no additional work was reasonably necessary.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

12. 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 King's Lynn and West Norfolk Borough Council shall pay to FGSPV 3 Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in arguing against the Council's arguments with respect to safety.
13. The applicant is now invited to submit to King's Lynn and West Norfolk 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

J Downs

INSPECTOR