



Costs Decision

Site visit made on 13 December 2022

by A Berry MTCP (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 12 January 2023

Costs application in relation to Appeal Ref: APP/M2840/W/22/3302576 Land at Alberta Close, Corby NN18 9HU

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr A Di Fazio of Britannia Homes (Midlands) Ltd for a full award of costs against North Northamptonshire Council.
 - The appeal was against the refusal of planning permission for a residential development of 14 dwellings.
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Decision

1. The application for a full award of costs is approved.

Reasons

2. The 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 causes the party applying for costs to incur unnecessary expense in the appeal process.
3. The application relies on the fact that the Council has failed to provide sufficient evidence to substantiate its reason for refusing the planning application, the Council have been inconsistent in determining similar planning applications, that the Council failed to engage with the appellant, and delays in the determining of the planning application.
4. The PPG indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal, or provide vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. The submission of an appeal statement by the Council is not mandatory. It is for the Council to determine whether they wish to defend the appeal on the basis of the Officer Report alone. The lack of an appeal statement therefore does not determine that the Council has failed to engage in the appeal process. I appreciate that the lack of communication with the Council during the application process and the extended length of time taken to make the decision, will have been frustrating to the appellant. However, I have no substantive evidence that this in itself resulted in the appellant incurring any additional expense as a result of this delay.
6. However, the Council, in setting out their position, have done so on the basis of a misinterpretation of national planning policy. Misapplying national planning policy when the scheme could otherwise have been approved if a correct

interpretation had been applied is unreasonable behaviour. This could have meant that an appeal was unnecessary and therefore the costs associated with making the appeal were unfairly incurred by the appellant. The fact that the Council has misinterpreted and misapplied national planning policy is further demonstrated by their inconsistent approach with another scheme determined after the scheme the subject of this appeal.

7. Furthermore, the Council's approach to say that the National Planning Policy Framework (NPPF) overrode their Development Plan (DP) policy was the wrong approach. The Council should have considered the DP policy and then considered the NPPF as a material consideration, to indicate whether a decision otherwise in accordance with the DP was appropriate. Although the Council alluded to the NPPF being a material consideration, it was not articulated in that way in the Officer Report and therefore it became a matter of planning judgement.
8. The time taken to defend the appeal was therefore borne out of the unreasonable behaviour of the Council and the appellant incurred unnecessary expense in the appeal process.

Conclusion

9. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

COSTS ORDER

10. 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 North Northamptonshire Council shall pay to Mr A Di Fazio, the costs of the appeal proceedings described in the heading of this decision.
11. The applicant is now invited to submit to North Northamptonshire 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.

A Berry

INSPECTOR