

Costs Decision

Site visit made on 15 November 2022

by K L Robbie BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2023

Costs application in relation to Appeal Ref: APP/N4720/W/22/3306507 Pelstone Cobbles, East Chevin Road, Otley, West Yorkshire LS21 3BN

- 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 Mrs Jessica Liddle for a full award of costs against Leeds City Council.
 - The appeal was against the refusal of planning permission for the change of use of agricultural building to single dwelling.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may 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. The Guidance is clear in setting out the circumstances in which a local planning authority could be vulnerable to an award of costs against it. It also goes on to advise of the circumstances in which a local planning authority's handling of the planning application prior to an appeal may lead to an award of costs.
4. In this instance the applicant is seeking on substantive grounds, a full award of costs against the Council on the grounds that the Council unreasonably prevented or delayed development which should be permitted having regard to its accordance with the development plan, national planning policy and other material considerations. In addition, it is argued, the Council failed to produce evidence to substantiate the reason for refusal and that which was submitted was vague, generalised or inaccurate and unsupported by any objective analysis.
5. Having carefully considered the applicant's claim for costs, planning law is clear that decisions should be made in accordance with the development plan unless material considerations indicate otherwise. It was the Council's assertion that the proposal did not accord with policies in the development plan, and they have set out clearly, albeit briefly, why they think that is the case. Therefore, I do not agree that the Council have failed overall to substantiate or rationalise their reason for refusing the application and the Council has not acted unreasonably in refusing the application. Furthermore, I ultimately agreed with the Council that the proposal was not in accordance with the development plan, which led me to dismiss the appeal.

6. I acknowledge that the Council's officer report contained an inaccurate statement relating to the Highway Authority's position on the proposal. However, their position is clarified further on in the officer's report, and when read as a whole it is clear that there were concerns regarding specific matters relating to the access to the site. Some of these would have been capable of being controlled by condition had the application been approved. The appellant's initial statement addresses these concerns in some detail. It is therefore clear that they understood the Highway Authority's concerns and sought to address them. Whilst it is therefore unfortunate that there was an error in the officer's report, this does not amount to unreasonable behaviour in this instance and has not prejudiced the appellant in defending their appeal.
7. The appellant is concerned that the Council have incorrectly cited policies in the decision notice. I have explained in my decision letter that the proposal fails to comply with policies in the development plan. I have also explained where I do not consider there to be any conflict with policies cited. Furthermore, it is also not unusual for Councils not to specifically refer to the National Planning Policy Framework (the Framework) in their reasons for refusal on planning applications. The PPG is clear that the Framework 'must be taken into account where it is relevant to a planning application or appeal'¹ and therefore is implicit that national planning policy is a consideration in the determination of all planning applications and appeals.
8. With regard to matters of Green Belt policy and character and appearance, the officer's report is short and to the point. However, this is not a criticism and does not amount to unreasonable behaviour on the Council's part through vague, generalised or unsubstantiated assertions. The Council were clear that they considered that the proposal did not benefit from any of the exceptions in either paragraphs 149 or 150 of the Framework. Assessments of the impact upon character and appearance will almost inevitably be subjective in nature. This is a matter of planning judgement. The Council were clear in their officer report that the concern here lies in the glazed gable feature, and I am satisfied that they have not acted unreasonably in this respect. It cannot therefore be the case that unnecessary or wasted expense has been incurred by the applicant in defending the appeal in this respect.
9. A structural survey was not requested by the Council during the course of the determination of the application. The officer's report is clear why they consider that the building is not of substantial construction. The plans submitted with the application are also clear as to what is being proposed by way of additions and rebuilding. I therefore consider that the provision of the structural survey has done little to add to that assessment. Whilst I consider that this was not a necessary expense, it was not incurred as a result of unreasonable behaviour by the Council.
10. The requirement for compliance with Leeds Unitary Development Plan Review 2006 (UDP) Policy GB4 follows on from UDP policy N33, which sets out inappropriate development in the Green Belt and broadly aligns with the Framework. Whilst the criteria listed in UDP policy GB4 are not explicitly set out in the Green Belt section of the Framework, all the requirements are compatible with other parts of it. Whilst it is not for me to defend the Council's development plan in a Section 78 planning appeal, the Council are within their

¹ 21b -006-20190315 (How must decisions on applications for planning permission be made?)

rights to set out in a policy what should generally be demonstrated with an application in certain circumstances.

11. I therefore find that the Council's handling of the planning application does not amount to unreasonable behaviour. My decision on the planning appeal sets out my reasoning as to why I agree with the conclusion reached by the Council. It is my view, therefore, that the appeal could not have been avoided. There was not, as a consequence, unnecessary or wasted expense as the Council's case was well-founded and justified. The engagement of a planning consultant to defend an appeal is not itself an unnecessary cost unless unreasonable behaviour on the part of the Council can be demonstrated.
12. As unnecessary or wasted expense has not arisen, the application cannot succeed. For the reasons set out therefore, the application for an award of costs against the Council fails.

KL Robbie
INSPECTOR