



Costs Decision

Inquiry Held on 13 - 16 December 2022

Site visit made on 16 December 2022

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2023

Costs application in relation to Appeal Ref: APP/G0908/W/22/3305389 Land West of St Andrews View, Thursby

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr David Hayward of Story Homes for a full award of costs against Allerdale Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for a proposal described as "*Resubmission of application FUL/2021/0299 for the building of 67 residential dwellings with associated open space, infrastructure, landscaping and ancillary works including temporary construction access*".
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Decision

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

Reasons

2. Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The appellant submits that the Council has failed to substantiate its reasons for refusal and has instead relied on vague, generalised and inaccurate assertions about the proposal's impact. In this regard, it submits that the Council has disregarded the advice of its environmental health officers and maintained its objections despite agreeing that the scheme adheres to relevant technical guidance. The appellant's view is therefore that the Council has prevented or delayed development which should clearly have been permitted.
4. The Council's Environmental Health section did not object to the development in relation to either noise or shadow flicker. Moreover, an external acoustic expert instructed by the Council also did not object to the development. However, the Council's case did not rest on technical grounds but on its judgement regarding the living conditions that future occupiers would experience.
5. The Council considered that the proposed mitigation measures would be harmful to residential amenity in that they would require most or all of the habitable room windows in some properties to be kept closed, in order to be effective. Its view was that this would place significant restrictions on future occupiers and could result in poor sleeping conditions. The Council also stated that shadow flicker would further contribute to what it considered to be a poor

residential environment. Whilst I came to a different view, it was not unreasonable for the Council to take this position, which was based on planning judgement. I also have a full and reasoned case before me in defence of these contentions, which does not rely on vague or generalised assertions.

6. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Thomas Hatfield

INSPECTOR