



Costs Decision

Site visit made on 15 December 2022

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2023

Costs application in relation to Appeal Ref: APP/T2405/W/22/3299464 The Mulberrys, Desford Road, Thurlaston LE9 7TE

- 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 Paul Loomes for a full award of costs against Blaby District Council.
 - The appeal was against the refusal of planning permission for a detached 5-bedroom home with parking and associated works.
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Decision

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

Reasons

2. Irrespective of the outcome of an appeal, costs may be awarded against a party who has behaved unreasonably, in either a procedural or substantive way, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 049 of the PPG sets out the examples of unreasonable behaviour by local planning authorities which includes 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 and making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. I acknowledge that the removal of the Council's pre-application service would have been disappointing to the applicant. However, the Council has explained that this service has been withdrawn for most proposals in order to focus Council resources towards determining planning applications. This, to me, seems a logical response to pressures in the department. In any event informal advice given before an application is made is given without prejudice and cannot pre-determine the outcome of a subsequent application. It is apparent that the Council's decision was based on relevant planning policy, guidance and other considerations. I therefore conclude that the actions of the Council do not amount to unreasonable behaviour.
5. Whilst supporting information has been submitted with the application the lawful use of the appeal site is a matter to be determined under Section 191 of the Town and Country Planning Act (1990). As the Council directs a Certificate of Lawful Development has not been approved establishing the lawful use of the site. As seen from my decision it is not within the scope of a Section 78

appeal to determine whether the appeal site lawfully forms part of 'The Mulberry's' garden.

6. The development plan defines settlement boundaries and sets out spatial policies for development outside towns and villages. The site lies beyond the settlement boundary of Thurlaston and the Council have exercised planning judgement by assessing the proposal against relevant development plan policies and other material considerations. Therefore, I find that the Council were not unreasonable in their approach or in coming to their decision.
7. I note the difference between the two parties in respect of the number of dwellings the access serves. Whilst the Council may well have referred to the incorrect number of dwellings, I am not persuaded that they have intentionally provided inaccurate information. In any event the number of dwellings served by the access is not a determinative factor, but rather visibility and intensification of the access. As seen from my decision, the Council had reasonable concerns about the impact of the proposed development which justified its decision relating to highway safety and has substantiated its position on appeal rather than vague, generalised or inaccurate assertions.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason an award of costs is not justified.

B Thandi

INSPECTOR