
Costs Decision

Site visit made on 10 February 2023

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st February 2023

Costs application in relation to Appeal Ref: APP/Z2315/W/22/3307132 Land at Junction 9, M65

- 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 Kevin Walsh for a full award of costs against Burnley Borough Council.
 - The appeal was against the refusal of planning permission for the construction of 2 agricultural buildings.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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 application is sought on substantive grounds, and the applicant has referred to where the PPG sets out the types of behaviour by Local Planning Authorities which may give rise to such an award. The applicant considers that in refusing the application because of a lack of a swept path analysis, in light of video evidence submitted, the Council has unreasonably prevented and delayed development which clearly should be permitted. The applicant is also of the view that the Council has failed to produce evidence as to why, given the videos, that a swept path analysis is required.
4. The Council's reason for refusal largely attributes its highway safety concerns to the lack of a swept path analysis. It is supported in its position by Lancashire County Council (LCC) as a Highway Authority. The purpose of the appeal statement that has been submitted by the Council is to amplify the matters which are set out in the reason for refusal and this is satisfactorily achieved. It also refers to relevant development plan policy. Nor is it unreasonable for the Council to be concerned over such matters, even though the access already exists, because a consideration of highway safety also depends on the potential effects of the proposal as well as on the location of the access itself.
5. LCC's written statement sets out what it considered were the shortcomings with the video evidence and the Council has made it clear that it is reliant on LCC in this regard. This is unsurprising because LCC are a consultee who

- provide highways advice to the Council. LCC also produced its own empirical evidence on traffic conditions, overrunning and vehicle tracking. Hence, it is not a position without substance and the Council has thus not failed to produce evidence as to why a swept path analysis is required.
6. Therefore, the Council has not for the purposes of the PPG failed to produce evidence to substantiate the reason for refusal on appeal, or made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
 7. In respect of whether this is a matter which was capable of being dealt with by way of a planning condition, there can be no certainty over what might come out of a swept path analysis until it has been done, especially if works are required at the access and involve land outside of the ownership of the applicant. The imposition of such a condition could therefore nullify a permission and so the Council's approach also does not fall foul of the PPG in this respect. Where LCC are purported to not object in principle and referred to conditions, on a reasonable reading of the evidence, this was on the basis of the swept path analysis been provided, which did not occur.
 8. With the case that has been put forward by the Council, it has not prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, under the PPG. Both development plan and national planning policy concern highway safety, as well as this being a material consideration.
 9. I have some sympathy for the applicant in that the issue of sightlines is raised in the Council's appeal statement, even though they do not feature explicitly in the reason for refusal. However, the reason does refer to matters of vehicles entering or egressing the site in a safe manner and accordingly sightlines can also be seen in this context. LCC, in its role as a consultee, is entitled to raise matters as it sees fit as long as they are properly evidenced. This is the case with sightlines, not least as LCC's views are based on Design Manual for Roads and Bridges guidance. None of these matters constitute unreasonable behaviour
 10. I have also considered whether a partial award should be made, but I reach the same overall conclusion. The Council has provided sufficient evidence across all the grounds and so such an award of costs is also not justified. As I have not found unreasonable behaviour, I do not have reason to consider whether unnecessary or wasted expense has been incurred.

Conclusion

11. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is not, therefore, justified.

Darren Hendley

INSPECTOR