



Costs Decision

Site visit made on 9 January 2023

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd February 2023

**Costs application in relation to Appeal Ref: APP/E2340/W/22/3306363
Land to the North East of St Thomas' Church, Wheatley Lane Road,
Barrowford BB9 6RJ**

Grid Reference Easting 385553, Grid Reference Northing 439494

- 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 Ben Wilkinson, Beck Homes Limited, for a full award of costs against Pendle Borough Council.
 - The appeal was against the refusal to grant planning permission for a Residential Development. Erection of 79 dwellings and estate infrastructure, including construction of new access from Wheatley Lane Road plus ancillary open space and landscaped areas.
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Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

Reasons

2. The application for an award of costs will be familiar to both parties. Consequently, I shall not repeat the submission in full within this decision. Government guidance on the award of costs is set out in the Planning Practice Guidance (PPG). Paragraph 030 of that guidance notes that a party may have costs awarded against them in relation to appeal proceedings if they have behaved unreasonably and that behaviour has led another party to incur unnecessary expense. Those two matters are pre-requisites for an award; if there has been no unreasonable behaviour or no wasted expense an award will not be justified.
3. The applicant seeks an award of costs on the basis that the Council has acted unreasonably through its unjustified opposition to the application which should have been allowed. They state that the Council had no substantive planning evidence to justify refusing or opposing the planning application for its three stated reasons which has frustrated the applicant's ability to prepare an Appeal Statement. In addition, the Council's Planning Manager confirmed that the officers, together with statutory consultees, considered that the application accorded with adopted policies and that there were no material planning objections to the proposal.
4. The applicant considers that the Council has: 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; failed to produce evidence to substantiate each reason for

- refusal; made vague, generalised or inaccurate assertions about the proposal's impact which are unsubstantiated by any objective analysis; refused planning permission on a planning ground capable of being dealt with by condition and are not determining similar cases in a consistent manner. In doing so the Council has caused the applicant to incur unnecessary cost and delay.
5. The Council state that reasons for refusal by their nature must to some extent be expanded upon in a Council's appeal statement, that is its purpose. In addition, the Council is not bound by the advice of officers and councillors made a reasoned judgement. They highlight that the local highway authority did raise concerns and the application required an exercise of planning judgement.
 6. The applicant sets out that the Council's response does not address any specific claimed deficiencies in respect of the application or disagree with any of the detailed matters raised by the applicant either in the Costs Application or the Statement of Case. They state that the County Highways officer did not object to the application and there was no reason why permission should not be granted.
 7. Council Members are entitled to go against the professional advice of Officers as long as it is clearly demonstrated why the proposal is unacceptable and clear evidence is provided to substantiate that reasoning. In terms of the first reason for refusal, the applicant had submitted a Transport Statement with the planning application. The highway authority did acknowledge that Church Street has substandard footways. However, they did not object to the development. As highlighted in my decision, I acknowledge that the footway along Church Street is narrow, and the scheme would increase pedestrian and vehicular traffic on Church Street. Nonetheless, that does not justify the reason for refusal. The Council has not provided any clear evidence to justify this reason for refusal.
 8. Thus, in relation to this matter the Council has failed to produce evidence to substantiate the reason for refusal. The reason for refusal is vague and unsupported by any objective analysis. The Council has not robustly justified why elected Members came to a different conclusion to their Officers and the highway authority. As a result, this reason for refusal was unreasonable, and the applicant has incurred unnecessary costs associated with this reason for refusal in addressing this issue as part of the appeal.
 9. In terms of the second and third reasons for refusal, the planning officer had found that there would be minor harm to the visual amenity of the area and less than substantial harm to the Barrowford Conservation Area. The applicant's heritage consultant also found that there would be less than substantial harm resulting from the proposal. In contrast to the case officer, the committee found that the harm would not be outweighed by the benefits of the development. The application required an exercise of planning judgement. Given the Council's housing supply position at the time, I do not consider this to be a wholly unreasonable conclusion. In this respect, adequate evidence was submitted to show that the Council did not apply its judgement in an unreasonable manner.
 10. Given my findings in relation to the second and third reasons for refusal, I do not consider that the Council has prevented or delayed development which should clearly be permitted or refused planning permission on a ground capable

of being dealt with by a planning condition. There is also no substantive evidence to demonstrate that the Council is not determining similar cases in a consistent manner.

Conclusion

11. The Council's reasons for refusal consisted of three elements. I have found, based on the evidence presented, that the first reason for refusal was unreasonable, but not the second and third.
12. I therefore conclude that unreasonable behaviour, as described in the PPG, resulting in unnecessary or wasted expense has been demonstrated, and a partial award of costs, to cover the expense incurred by the applicant in contesting the first part of the Council's reason for refusal, is justified.

Costs Order

13. 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 Pendle Borough Council shall pay to Mr Ben Wilkinson, Beck Homes Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the first reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Pendle Borough 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.

L Wilson

INSPECTOR