



Costs Decision

Site visit made on 1 August 2022

by J Symmons BSc (Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 03 March 2023

Costs application in relation to Appeal Ref: APP/W0734/W/22/3297347 Land at Hemlington Lane, Middlesbrough TS8 9DW

- 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 Ken Shannon for full costs against Middlesbrough Council.
 - The appeal was against the refusal for planning permission for the development described as erection of 18no bungalows with associated access and landscaping works.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expenses in the appeal process.
3. The PPG provides examples of behaviours that risk an award of costs, including, amongst others: 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; failing to produce evidence to substantiate each reason for refusal on appeal, and making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. This application for costs contends that the Council Members acted unreasonably in overturning the Council Officer's recommendation that the application be approved. It is alleged that the Council Members failed to take proper account of the Committee Report's findings, agreed mitigation measures to be secured through a proposed planning obligation, and the previously consented planning history of the site. The applicant also raises that the Council Members made reference to the Middlesbrough's Green Strategy 2021 (Green Strategy) which was not raised in the Committee Report and is not part of Middlesbrough's Development Plan.
5. In regard to decision making, a Council is not duty bound to follow the advice of its professional officers. However, if a contrary decision is reached the Council should clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. The minutes of the Planning and Development Committee indicate that the Council

Members were aware of the reasons for the recommendation, the planning history and planning obligation and entered into meaningful discussion and consideration of the case. Having regard to the provisions of the development plan, national planning policy and other material considerations, their conclusion on the proposal was based on planning judgement. I am satisfied that the minutes provide sufficient information as to why Council Members made a decision contrary to officer recommendation. As such, the Council was not unreasonable in coming to its decision.

6. The planning history of the appeal site shows that it has previously been consented for residential use and these were considered in the Committee Report as part of the principle of development. However, these consents have lapsed and as such there is no fall-back position, and the planning balance needs to be considered in the light of the circumstances that exist now. It is therefore reasonable for the Council Members to re-appraise the suitability of the proposal and current site conditions in making their decision.
7. In terms of the Green Strategy, the Council Members are entitled to have regard to any material considerations that are relevant. As the Green Strategy includes reference to increasing tree coverage to the town, there is some relevance to the proposal. On this basis it is reasonable for the Council Members to consider this information. It is evident that the Council Members did not consider the Green Strategy in isolation and had full regard to the development plan and the National Planning Policy Framework in its deliberations.
8. The reasons for refusal stated on the decision notice were clear and precise in relation to the considered harm to trees, biodiversity, ecology and the living conditions of residents on Hemlington Lane. It refers to relevant local and national planning policies and reasonable substantiation is provided on the Council Members' consideration regarding the proposal's impacts.
9. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, and having had regard to all other matters raised, an award of costs is not justified.

J Symmons

INSPECTOR