



Costs Decision

Site visit made on 24 January 2023

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 April 2023

**Costs application in relation to Appeal Ref: APP/G2713/W/22/3306331
Part OS Field 0038, Foss Syke Lane, Sandhutton, North Yorkshire YO7 4RS**

- 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 Wheatley for a full award of costs against Hambleton District Council.
 - The appeal was against the refusal of reserved matters for a development of 5 No. dwellings.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 for costs in this case was made by the applicant against the Council on two grounds, firstly in relation to the substance of the appeal, and secondly in respect of procedural matters.

Substantive matters

4. The PPG¹ cites examples of substantive grounds on which a Council could be vulnerable to costs against it. These include if a Council prevents or delays development which should clearly be permitted, having regard to the development plan, national policy and other material considerations.
5. Having carefully considered the applicant's claim for costs, planning law is clear that decisions should be made in accordance with the development plan unless material considerations indicate otherwise.
6. It is not for me to second guess the Council's process for the assessment of the scheme prior to recommending refusal to the planning committee, and I have clearly set out my reasons in my decision why I disagree with the Council. I appreciate the applicant's frustration that they felt positive progress was being made towards an acceptable solution with regards to the layout and appearance of the proposal. Nevertheless, from what I have seen and read; the Council did not provide any guarantees that planning permission would be granted as a result of those negotiations and amendments to the scheme.

¹ Paragraph: 049 Reference ID: 16-049-20140306

7. It was the Council's assertion that the proposal did not accord with policies in the development plan, and they have set out clearly why they think that is the case. This is a matter of planning judgement. The Council were clear in their officer report that the concern related to matters of character and appearance and the mix of houses within the scheme.
8. I acknowledge that there were discrepancies in the description of the housing mix between the officer report and the plan, and that there is agreement between the parties that this was the case. I have not been presented with a verbatim record of the planning committee meeting nor a copy of the officer's presentation. It is unlikely, however, that any such inaccuracies, whilst unfortunate, would have led to a different outcome in this instance.
9. Whilst I have reached a different conclusion to that reached by the Council with regard to the effects of the proposal on character and appearance and the mix of housing within the proposed scheme. It does not suggest to me that the Council were unreasonable in reaching their conclusion. It is also clear that they considered the identified harm to conflict with specific development plan policies. It cannot be the case that unnecessary or wasted expense has been incurred by the applicant in defending the appeal in this respect.
10. However, the refusal reason on drainage grounds was not included in the officer's recommendation. Whilst the planning committee is entitled to take a different view to that of the officers, this matter was considered and adequately covered by a condition imposed on the outline planning permission. I have no information before me which would indicate that the scheme before me would render the condition unresolvable and remains to be discharged as a requirement of the outline planning permission. The refusal of the Reserved Matters application on this ground is therefore unreasonable. Furthermore, the Council have failed to substantiate the reason in their Statement of Case. Whilst the applicant has not provided further technical information at the appeal stage, time has been spent defending the appeal on this ground. I therefore find that the LPA has acted unreasonably in this matter.

Procedural Matters

11. It is good practice, and the PPG² encourages Local Planning Authorities to seek extensions of time from applicants where the determination of planning applications is likely to take longer than the statutory timescales, as was the case in this instance. In the meantime, the Council adopted an updated Size Type and Tenure of New Homes Supplementary Planning Document (SPD). Nevertheless, the SPD was an emerging document at the time of the application and given its stage of adoption was capable of carrying weight in the determination of the application prior to adoption.
12. The applicant alleges that the delays in determining the planning application have led to increased costs relating to the development. From the information I have before me, I do not consider that the Council unreasonably delayed determination of the planning application. I therefore do not consider that the Council have acted unreasonably in their timing of determining the planning application.

² Paragraph: 003 Reference ID: 21b-003-20140306

13. The applicant alleges that planning officers requested amendments to the scheme which were in direct conflict with comments made by councillors. I have not been provided with precise details of these comments. Councillors are entitled to express their own opinions. It is not an unusual situation for councillors and planning officers to disagree. Given the officer recommendation in this case was for refusal of the application, I do not consider that this has resulted in an outcome which could have been avoided. Neither do I find it unreasonable for the applicant to attend the planning committee when their application is being heard. Unreasonable behaviour has not been demonstrated in this instance.
14. The applicant maintains that the Rural Housing Officer's detailed comments were not made available to him until after the planning application was determined. However, their comments are summarised in the planning officer's report and the Council state that the Rural Housing Officer's views were made available to the applicant during the course of the application. I do not consider that, had the applicant been privy to figures provided to the planning officer prior to the determination of the appeal that the outcome of the application would have been different. I do not consider that the Council has acted unreasonably in this matter.
15. The applicant claims that the Council failed to respond to emails during periods of staff absence. Whilst the applicant could reasonably expect a reply in the form of an acknowledgement or out of office reply during staff absence as a matter of good customer service, from what I have seen and read, the emails were sent to an officer's email account rather than a generic inbox and the member of staff was absent due to annual leave for a short period of time. I have not been made aware that emails went unanswered for long periods of time.
16. There was a delay between the committee meeting and the issuing of the decision notice. The delay was communicated to the applicant by a senior planning officer and was due to staff absence. Whilst this delay is regrettable, I do not consider that it amounts to unreasonable behaviour.
17. The evidence before me from both parties on this element of the claim does not demonstrate that the Council failed or refused to cooperate with the applicant, or that the failure to adhere to deadlines in respect of the planning application, whilst I consider that the applicant received poor customer service, the Council's behaviour falls short of being unreasonable.
18. For the above reasons, I therefore find that the Council's handling of the planning application in respect of procedural matters does not amount to unreasonable behaviour.

Conclusion

19. For the above reasons, despite the shortcomings of the Council in its determination of the application, I find that it did not behave unreasonably in terms of the issues relating to character and appearance and the mix of housing within the scheme. However, I find that it did behave unreasonably in terms of the issue concerning drainage. As such, in respect of drainage matters the appellant's costs in pursuing that aspect of the appeal were unnecessarily incurred and wasted. For this reason, and having regard to all other matters raised, a partial award of costs is justified.

Costs Order

20. 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 Hambleton District Council (now part of North Yorkshire Council) shall pay to Mr Wheatley the costs of the appeal proceedings described in the heading in this decision, limited to those costs relating to the substantive grounds linked to the refusal reason concerning drainage matters; such costs to be assessed in the Senior Courts Costs Centre if not agreed.

KL Robbie

INSPECTOR