



Costs Decision

Site visit made on 14 April 2023

by Zoe Raygen DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2023

**Costs application in relation to Appeal Ref: APP/E2734/W/22/3313546
Site of Former North Yorkshire Timber Company Limited, Trinity Lane,
RIPON, HG4 2AL**

- 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 Red Tree Developments Ltd for a full award of costs against Harrogate Borough Council.
- The appeal was against the refusal of planning permission for demolition of existing buildings and erection of thirteen dwellings, realigned access onto Trinity Lane, and associated parking and landscaping.

Decision

1. The application is refused.

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 applicant considers the Council took an overly long time determining the planning application thereby preventing and delaying development which should clearly be permitted having regard to the development plan, national policy and any other material considerations. In addition, the Council failed to take proper account of the applicant's viability and structural evidence and failed to provide appropriate evidence to substantiate reason for refusal No 1 regarding harm to the heritage assets.
4. Finally, reasons for refusal 3,4, 5 and 6 are unreasonable as the applicant either provided the relevant information or was prepared to enter into a legal agreement to seek the requested contributions.
5. The PPG states that an award of costs is an order which states that one party shall pay to another party the costs, which may be in full or in part, which have been incurred by the receiving party during the process by which the Secretary of State's or Inspector's decision is reached. I am therefore unable to take into account the period of time taken by the Council to determine the planning application. Furthermore, while I have found some issues that the Council raises to be acceptable, I have dismissed the appeal. Therefore overall, I do not consider that the Council has prevented or delayed development which should clearly be permitted having regard to the development plan, national policy and other material considerations.

6. The Council's viability advisors CPV did take account of the applicant's detailed costs of the conversion of the building supplied by Appleyard and Trew, which were based on the structural review of the building undertaken on behalf of the applicant. CPV used Appleyard Trew's figures, albeit reduced, as explained in their email dated 16 March 2022, but still concluded that the conversion of the building would be viable. That two professionals disagree is not uncommon and certainly not unreasonable. I have based my decision on the evidence before me, including viability assessments from both parties and my observations on site.
7. The applicant and the Council were in agreement at the time of the consideration of the planning application that both affordable housing and public open space were matters that could be appropriately dealt with by an off-site contribution secured by legal agreement. However, at the time of determination, as the Council considered that there were other issues that could not be adequately overcome, there was not a signed and sealed legal agreement before them. Rightly therefore both matters were the subject of a reason for refusal. Notwithstanding the applicant's assertions that the Council has not been forthcoming regarding the affordable housing element, there is before me a unilateral undertaking to secure both public open space and affordable housing contributions in an acceptable manner. Therefore, in my view the Council has not acted unreasonably in this respect, and even if it had, the applicant has not had unnecessary or wasted expense as they would have had to enter into a legal agreement in any case whether at the application stage or at appeal.
8. Turning to reason for refusal number 6 where the Council allege that the applicant failed to demonstrate that there would be a net gain in biodiversity and that adequate ecological surveys had not been provided.
9. The applicant had provided a Biodiversity Net Gain Metric calculation which demonstrate that the proposal would achieve a 150% Net Gain in Biodiversity. The officer in the planning application report states that the submitted Biodiversity Net Gain Assessment is adequate to demonstrate that the proposed development would constitute biodiversity net gain. The fact that this was included in the reason for refusal is therefore unreasonable.
10. The Council's ecologist commented on the planning application that the protected survey element of the reason for refusal had not been adequately addressed by a survey undertaken in winter. Due to the timing of the application, it was suggested that the applicant carry out a survey prior to determination or it be a reason for refusal. It is apparent therefore that the applicant would have had to do an additional survey regardless of whether the application was refused or not. That the Council refused the application on these grounds prior to the survey being undertaken is not unreasonable, and in any case, there was no unnecessary or wasted expense as the survey needed to be undertaken. Furthermore, as the applicant had already undertaken the BNGA, although the Council was unreasonable to include this in the reason for refusal, there has been no unnecessary or wasted expense in this respect either.
11. The applicant considers that they submitted sufficient information regarding land stability including a phase 1 Environmental Assessment Report, Initial Geotechnical Assessment and a Geotechnical Desk Study. All these do though

is highlight that there could be gypsum deposits underlying the site and recommend that further ground investigation is carried out. Policy NE9 requires that the developer demonstrates that appropriate measures can be put in place to ensure that the development can be safely undertaken and that there are no risks of instability over the lifetime of the development. A programme of ground investigation to provide the information for detailed foundation design would therefore need to be undertaken prior to any permission being given. The Council has not therefore acted unreasonably in this respect; indeed, I have agreed with it in my decision.

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, for the reasons given above, I refuse the application for an award of costs.

Zoe Raygen

INSPECTOR