



Costs Decision

Site visit made on 31 January 2023

by Ann Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 May 2023

Costs application in relation to Appeal Ref: APP/E0915/W/22/3307760

Land north of Tarn Lodge Farm, Heads Nook, Brampton, Cumbria CA8 9BT

- 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 Ian Whittaker for a full award of costs against the decision of Carlisle City Council.
 - The appeal was against the refusal of planning permission for the siting of 2no. three bed and 2no. two bed lodges and 2no. pods together with landscaping, newt ponds, a sealed foul water drainage system, access track and parking.
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Decision

1. The application for an award of costs 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's main basis for the application for a full award of costs is that the Council acted unreasonably from a substantive perspective in relation to the reason for refusal. It is put to me that the Council failed to produce evidence to substantiate each aspect of the reason for refusal and made vague/inaccurate assertions which were unsupported by objective analysis; has been inconsistent and not reviewed their case following the lodging of the appeal. The applicant therefore considers the Council acted unreasonably, and this has resulted in unnecessary expense.
4. It is apparent that pre-application discussion took place between the applicant's agent and the Highway Authority (HA). Once the application was submitted, further information was sought by the HA and its advice changed thorough the course of the application. The applicant considers this was, in part, due to considerable pressure from objectors and that it was illogical and contradictory of the Council, despite actual speed data being provided, to require a visibility splay associated with the posted speed limit. The applicant also refers to the lack of evidence provided by the Council to substantiate the specific reference to the effect of undulations in the road in the reason for refusal. Finally, the applicant believes the Council has not been consistent when considering a similar case nearby and recent appeal decisions in this respect.
5. It is clear from the email correspondence between the HA, the Council and the applicant that the Council were justified in seeking additional highway information to be able to consider the planning merits of the proposal. The Council were entitled to find insufficient evidence had been provided regarding

the effect of undulations in the road on visibility when reaching their decision, even when presented with information at committee and during the course of the appeal, particularly when assessing the effect upon visibility at the point when a vehicle may be in the 'dip' of the road. This does not result in unreasonable behaviour.

6. Furthermore, the Council, in the officer report, clearly explains why the required visibility splay cannot be achieved, due to undulations in the road and a hedgerow on third party land. The Council also set out in the report that anomalies were found in the most recent speed survey and provided an explanation of why this might be so. I do not consider that the Council failed to properly evaluate the application nor review it once the appeal had been lodged.
7. Rather than simply agree with the pressure from objectors to follow the Cumbria Development Design Guide, the HA advocated that the abnormal traffic-related nature of the road network in this location, particularly from Light Goods Vehicles, should be taken into account and an 85th percentile speed used as a basis for determining the visibility splay. However, the Council then proceeded to maintain the view that the posted 60mph visibility splay should be required. I find there was no reasonable basis for this stance and conclude the Council acted unreasonably in his matter.
8. In terms of consistency, I accept that the assessment of visibility splay involves a certain amount of technical judgement. The PPG is clear that local planning authorities are at risk of an award of costs if they behave unreasonably by not determining similar cases in a consistent manner. The Council indicate in their statement that the appeal decisions referred to by the applicant do not pertain to the current appeal and reference is made to an off-set from the inside kerb around a bend in the road.
9. As stated in my appeal decision, I do not have the full details of the other appeal examples. Nonetheless, while it is unfortunate that a fuller explanation of how these examples differ from the current appeal, the Council assessed the proposal on its own merits, having regard to the submitted information and the knowledge of the HA.
10. In summary, I have found that the Council were unclear and contradictory in referring to the posted 60mph visibility splay in the reason for refusal when the HA also advocated the use of an 85th percentile speed assessment to determine the visibility splay. The Council therefore acted unreasonably in this regard. However, an award of costs can only be made if unreasonable behaviour leads to unnecessary or wasted expense, and I do not believe that to be the case here.
11. The Council did not feel able to grant permission. I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme and therefore the appeal could not have been avoided. Notwithstanding my comments in relation to whether the posted national speed limit or the 85th percentile speed limit is used to assess the visibility splay, the officer report provides sufficient evidence for the appellant to be clear on the Council's main concerns for the submission of the appeal and the Council have substantiated why the proposed visibility splay would not be acceptable in this particular case. As such, the appeal would still likely have been lodged. The applicant has therefore not incurred any unnecessary expense.

12. Taking all the above points into account I find that although the Council has exhibited unreasonable behaviour in respect of referencing the national speed limit visibility splays within the reason for refusal, this has not resulted in the applicant incurring unnecessary or wasted expense, as described in the PPG. The application for costs is therefore refused.

Ann Veevers

INSPECTOR