



## Costs Decision

Site visit made on 2 May 2023

**by F Wilkinson BSc (Hons), MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 22<sup>nd</sup> May 2023**

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### **Costs application in relation to Appeal Ref: APP/G2713/W/23/3314912 Land at OS Field Number 3255, Ings Lane, Tollerton YO61 1QY**

- 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 Louise Barker and Kevin Akwe for a full award of costs against Hambleton District Council.
  - The appeal was against the refusal of planning permission for erection of stables for private use.
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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. Unreasonable behaviour may be procedural and/or substantive.
3. In summary, the applicants claim that the Council has acted unreasonably in that the reasons for refusal are vague, generalised and unsubstantiated, and it did not consider a condition to secure biodiversity net gain (BNG) at the site. The Council disputes that it has acted unreasonably.
4. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. The PPG also states that refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead.
5. Reason for refusal one relates to the effect of the proposal on the character and appearance of the area. This reason for refusal is a matter of judgement. The reason for refusal explains why the proposal was considered to be unacceptable and is framed within the context of the development plan.
6. This reason for refusal has been substantiated in the Council's officer report and appeal statement. The Council had reasonable concerns about the impact of the proposal on the character and appearance of the area, and these are based on a conflict with the development plan and the National Planning Policy Framework (the Framework).

7. The PPG states that where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application. I find this to be the case with refusal reason one. Accordingly, I find no unreasonable behaviour was exhibited by the Council in this respect.
8. Reason for refusal two relates to a failure to demonstrate how a net gain in biodiversity would be provided. Policy E3 of the 2022 adopted Hambleton Local Plan states that all development will be expected to demonstrate the delivery of a net gain for biodiversity. The supporting text to the policy sets out that the latest DEFRA guidance and relevant tool should be used to demonstrate compliance with the policy. The Framework also sets out that proposals are to contribute to and enhance the natural and local environment, through minimising impacts on and providing net gains for biodiversity.
9. The applicants' BNG assessment was only provided as part of the appeal process. This information was not therefore available to the Council during its determination of the proposal.
10. The onus was on the applicants to provide the Council with sufficient information to enable an assessment of the proposal against the requirements of the relevant development plan policies. A Planning Supporting Statement<sup>1</sup> was submitted with the application. The list of pertinent policies identified in this document does not include Policy E3 and no information was presented on BNG. Irrespective of whether a statutory consultee had raised the issue of BNG or not, the Council was entitled to reach the view that the lack of evidence to demonstrate that the proposal would deliver a net gain for biodiversity meant that it was not in accordance with the requirements of Policy E3. Reason for refusal two has been framed on that basis.
11. Although I have found that BNG could be achieved through a planning condition, this was with the benefit of having the applicants' BNG assessment which demonstrates that the proposal would be capable of providing gains for, as well as losses to, biodiversity. As noted above, this evidence was not available to the Council when it determined the application.
12. On this basis, I find no unreasonable behaviour by the Council in this respect.

## **Conclusion**

13. For the above reasons, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

*F Wilkinson*

INSPECTOR

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<sup>1</sup> Planning Supporting Statement Including Design and Access Statement, July 2022, AAH Consultants