



Costs Decision

Site visit made on 3 May 2023

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 JUNE 2023

**Costs application in relation to Appeal Ref: APP/Y2003/W/22/3297656
Agricultural Barn (Next to the Stables Restaurant), High Street,
Messingham DN17 3UJ**

Easting (x) 489340 Northing (y) 404148

- 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 Philip Jackson - Jackson Philips Asset Solutions for a full award of costs against North Lincolnshire Council.
 - The appeal was against a refusal to grant outline planning permission for development described as 'Outline planning consent for 0.96 ha (2.45 acres) (up to 20 dwellings) residential development with all matters reserved'.
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Decision

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

Reasons

2. 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 PPG provides that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. Examples of this include where a local planning authority fails to produce evidence to substantiate each reason for refusal on appeal, where vague, generalised or inaccurate assertions are made about a proposal's impact, which are unsupported by any objective analysis or where planning permission is refused on a planning ground capable of being dealt with by condition.
4. I acknowledge that the Council's Planning Committee is not duty bound to accept the recommendation of its officers. However, a refusal of planning permission needs to be justified through detailed analysis. It is not clear from the Council's decision notice what is meant in terms of a failure to demonstrate that 'a sufficient level of amenity exists'. The Council's Committee Minutes summarise the general discussions that took place. However, the Minutes do not provide any precision or clarity as to the precise harm that led to the Council's decision. Reference to development plan policies alone is not sufficient to identify any site-specific harm identified.
5. The Council's statement of case suggests that 'it could be argued that by introducing dwellings on the site there could be the potential for impact on the amenity of future occupants (through noise and other disturbance)'. However,

this fails to consider the particular circumstances of the case. More particularly, there is no recognition that the outline nature of the proposal would allow for detailed matters of layout to be informed by the potential relationships with neighbouring land uses.

6. Moreover, the Council's Environmental Protection Team recommended a condition requiring a Noise Impact Assessment. I have found in my appeal decision that such a condition would be capable of addressing the Council's concerns as it could inform the detailed design and layout of the proposal which in turn could incorporate any necessary mitigation. This would ensure that there would be no unreasonable restrictions placed upon neighbouring businesses thereby also overcoming would overcome the second element of the Council's reason for refusal. The Council's evidence does not provide any objective evidence in terms of whether such a condition was considered by its Planning Committee and, if so, why it was ruled out as an option.
7. Therefore, the Council's decision is vague and generalised. It has not been reasonably substantiated through the provision of any objective analysis and permission was refused on a planning ground capable of being dealt with by condition.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

9. 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 North Lincolnshire Council shall pay to Mr Philip Jackson - Jackson Philips Asset Solutions, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to North Lincolnshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Russell

INSPECTOR