



Costs Decision

Site visit made on 13 June 2023

by Helen Hockenhull BA (Hons) B.PI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 July 2023

Costs application in relation to Appeal Ref: APP/E0915/W/23/3315937 Land South of Tantallon House, Gilsland, Brampton, Cumbria, CA8 7DA

- 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 Liam McNulty for a full award of costs against Carlisle City Council.
 - The appeal was against the refusal of outline planning permission for detached two storey dwelling with all matters reserved for future determination except highway access.
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Decision

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

Reasons

2. 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 submits that the Council has been unreasonable and has caused them to incur significant costs in preparing and submitting the appeal. It is argued that the Council prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any material considerations. It is also submitted that the Council has failed to produce evidence to substantiate each reason for refusal and that the Council used vague, generalised or inaccurate assertions about the proposals impact, unsupported by any objective analysis. Furthermore, it is alleged that planning permission was refused on a planning ground capable of being dealt with by a condition.
4. The applicant relates the above grounds to the three reasons for refusal. I shall deal with each in turn.

Reason for refusal 1

5. The first reason for refusal relates to the principle of the development and cites Policies SP2 and HO2. An assessment of the scheme against these policies requires consideration of the characteristics of the site, its relationship to the settlement, landscape features and the wider area. The Council describes the characteristics of the area as being predominantly open and rural with sporadic built form and pockets of mature woodland. The Council also described the site as being part of a large parcel of agricultural grazing land. I understand these judgments were made following site visits in association with this and an earlier planning application on the site. The applicant considers these statements are inaccurate and misleading.

6. Ultimately this comes down to a matter of professional judgment. The Council is entitled to have a different view. I have stated in my decision that I consider the Council's description to be reasonable and to fairly represent the character of the area. Consequently, I find that the Council has not acted unreasonably in this regard.
7. The Council Officers report is succinctly written. It recognises the residential properties to the north and east of the appeal site and considers the character of the area. The relationship of the appeal site to Gilsland is discussed and it is concluded that the proposal would result in an unacceptable intrusion into the countryside. Whilst the analysis could have been more detailed, I consider it to be adequate to explain the reason behind the Councils decision and substantiate the reason for refusal. Unreasonable behaviour has therefore not taken place.
8. The appellant in evidence provides details of personal circumstances and their involvement in the local community. It is argued that the Council did not use this information to assess the schemes compliance with Policy HO2 but rather against Policy H06. I agree that the Officers report did not specifically analyse the development proposed in terms of its impact in enhancing or maintaining the vitality of the rural community, (part 2 of Policy HO2). However, this does not prejudice the applicant, as the Council only found non-compliance with parts 1 and 3 of the policy.
9. Given the above, I find that the Council has not behaved unreasonably in terms of reason for refusal 1.

Reason for refusal 2

10. This reason for refusal relates to landscape harm and requires an assessment of landscape character. The applicant makes the same criticism of the Council's characterisation of the area. I do not intend to discuss this again. My finding above is still pertinent.
11. The Council made use of the Landscape Character Assessment for Cumbria to assess the proposal and its impact. Whilst the Officer report provides a good description of the landscape character area in which the appeal site is located, the assessment of the scheme and its impact is limited and lacks detail. Nevertheless, it does consider the character of the existing area and then comes to a judgment on whether the proposal would have an unacceptable impact on landscape character.
12. I acknowledge that the report does not consider specific viewpoints or take account of localised landscape features which may screen the site. This would certainly have made the Council's case more robust. Whilst the submitted evidence on this point lacks depth, I am not persuaded that the Council has failed to substantiate the reasons for refusal. Therefore, unreasonable behaviour has not occurred.
13. Concluding on whether the proposal caused harm to the character and appearance of the area required judgment. The Council did not prevent or delay a development which should clearly be permitted.

Reason for refusal 3

14. This reason for refusal concerns to the potential harm to the River Eden SAC

through increased nutrients. The applicant has had difficulties in completing a Nutrient Budget calculator for the scheme as the tool devised by Natural England published on the Council's web site omitted the River Irthing. The applicant made the Council aware of this before submitting the application on 27 June 2022.

15. I note that it took some time for Natural England to correct the calculator. The appellant contacted the Council a number of times seeking notification of when the revised calculator would be available. No reply was received. The Council then refused the application on 3 October 2022 for three reasons one of which related to nutrient neutrality.
16. Following the refusal of planning permission, I understand that the appellant discovered a revised calculator had been published in July 2022 and was available on a neighbouring authority web site. It was therefore published before the determination of the application.
17. The PPG¹ is clear that costs cannot be claimed for the period during the planning application process, though behaviour and actions at the time of the planning application can be taken into account in the consideration of costs. In the costs rebuttal the Council do not explain why the calculator had not been updated promptly when it had been revised or explain the lack of response to the applicants' emails. Based on the evidence before me in this case, I find that the Council's lack of communication during the application process, the subsequent refusal of the planning application and poor administration in relation to the information on its website amounts to unreasonable behaviour.
18. If the applicant had been able to complete the calculator before the application was determined, he would have had the opportunity to put forward mitigation measures to achieve nutrient neutrality. I acknowledge that the application was refused on three grounds. Therefore, even if this matter had been resolved, it is unlikely that an appeal would have been avoided. However, the applicant would not have had to incur the costs associated with defending the third reason for refusal. A partial award of costs is therefore justified.
19. As part of the appeal submission, the applicant put forward a proposal for a cesspit to address the nutrient neutrality issue. It is argued that planning permission was refused on a planning ground capable of being dealt with by a condition. However, at the time the planning application was under consideration, because the nutrient calculator was not available, the applicant had not suggested any mitigation measures for the Council to assess. The Council did not therefore have an opportunity to consider the imposition of a condition. In the circumstances of this case, I am not persuaded that this could be regarded as unreasonable behaviour.

Conclusion

20. In the light of the above, I conclude that unreasonable behaviour has been demonstrated and that a partial award of costs is justified as the applicant has incurred unnecessary or wasted expense in addressing the third reason for refusal at the appeal.

¹ Paragraph: 033 Reference ID: 16-033-20140306

Costs Order

21. 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 Carlisle City Council shall pay to Mr Liam McNulty, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the appeal process in addressing the Council's third reason for refusal, such costs to be assessed in the Senior Courts Costs Office if not agreed.
22. The applicant is now invited to submit to Carlisle City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount.

Helen Hockenhull

INSPECTOR