



Costs Decision

Site visit made on 27 June 2023

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2023

Costs application in relation to Appeal Ref: APP/P2935/W/23/3320616 7 Springfield Meadow, Hillcrest, Alnwick NE66 2NY

- 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 Linda, John and Katherine Conley for a full award of costs against Northumberland County Council.
 - The appeal was against the refusal of planning permission for new family 1.5 storey dwelling with a garage, external parking and associated services.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Informal advice given before an application is made is given without prejudice and cannot pre-determine the outcome of a subsequent application, which must take account of all relevant factors. Given this, it is not unreasonable in principle for the decision of a Council on a planning application to deviate from its advice at the pre-application stage.
3. However, in this particular case, the pre-application submissions included a plan showing the proposed layout of the house and CGI images providing a visual representation. Although the plans which accompanied the planning application were more detailed and the design of the proposed house was not identical to the pre-application scheme, the layout and appearance of the house were, nevertheless, similar. The proposal submitted at the pre-application stage included design characteristics which, later, in its consideration of the planning application, the Council raised objection to. Although the Council's pre-application response is caveated, it also includes wording which would have provided the reader with the sense that the design was considered acceptable. I note that the conclusion states "*In the event that a planning application is submitted, it **would** be likely to be looked upon favourably*".
4. Given the design of the proposal did not evolve significantly from the pre-application submissions, for the Council to then determine that it must refuse the subsequent planning application on design related grounds was somewhat inconsistent and, doubtless was a surprise to the applicant. I find the Council has, therefore, exhibited some unreasonable behaviour.
5. Despite this, the Council's formal decision on the planning application itself was one of refusal. It can be seen from my Appeal Decision that, in agreement with the Council, I have concluded that the proposed development would result in unacceptable harm to the character and appearance of the area. I have also

concluded that the proposed development would conflict with policies within the development plan and would be inconsistent with advice within the Framework. It follows that the Council have not prevented a development which, having regard to the development plan, national policy or material considerations, should clearly have been permitted.

6. I accept that, given the Council's decision contained an erroneous policy reference, the appellant was compelled to address this matter in their appeal submissions. As a part of this, some time would have been spent reviewing the content of the Alnwick & Denwick Neighbourhood Plan 2014-2031 (July 2017, NP). However, I find that, relatively quickly it becomes apparent that a policy with the reference HE1 is not within the NP and the Council's Officer Report does, correctly refer to Policy HD1 at paragraph 4.3. This would have provided some indication that the reference to HE1 was likely a typographical error, even though the Council did not confirm this prior to the appeal being submitted and, regardless of their reasons for a delay in providing this clarification. Therefore, I am satisfied that any wasted expenditure on this matter was unlikely significant.
7. Moreover, the Council's decision also identified other policies within the development plan which were correctly referenced and, it was also clear that the first refusal reason related to the effects of the development upon the character and appearance of the area. Therefore, although the Council's error did result in the appellant unnecessarily having to address this as part of the appeal, if this had not occurred, the substance of the planning matters in dispute remained the same.
8. It has also been put to me that the Council has failed to act in a positive and proactive manner. This includes allegations of inadequate communication during the planning application process, by the refusal to agree to an extension of time and, by not providing the applicant with opportunity for further submissions or amendments outwith of a further pre-application process.
9. However, even if I were to accept that this was the case and, despite the erroneous policy reference and the earlier pre-application response, I have no substantive evidence before me that an appeal could have been avoided nor that it would have been very likely that pertinent issues would have been narrowed.
10. I am mindful that the Planning Practice Guidance (PPG) advises 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 for unreasonable refusal of an application. It can be seen from my Appeal Decision and my findings on the main issue that these very circumstances apply in this case.
11. As explained within my Appeal Decision, given I have dismissed the appeal for the reasons set out in the main issue, it is not necessary for me to consider the content of the UU in detail. The absence of such a planning obligation prior to the determination of the application led to the Council's second refusal reason. There is no disagreement between the main parties that it is standard practice for Northumberland County Council to draft such a legal agreement. There also appears to be no disagreement between the main parties that the UU is,

amongst other matters, necessary to make the development acceptable in planning terms. The Council have explained that given the planning application was being refused for other reasons, the Council undertaking the drafting prior to making its decision, did not, in this particular case, take place. I have no substantive evidence before me that, in a scenario where the Council are minded to refuse planning permission, it would be usual of them to complete the drafting of a legal agreement. For these reasons, I have no firm basis to conclude that the Council not drafting a planning obligation prior to the determination of the application and, for the absence of such a planning obligation forming the basis of a reason for refusal, amounts to unreasonable behaviour by the Council.

12. It may be that the applicant has acted reasonably prior to submitting their planning application and during the planning application process itself. However, this is not very relevant to my Costs Decision as I must determine whether the Council has acted unreasonably and whether any unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. There may also have been no objections raised as a result of the Council's consultation exercises, but this does not mean that the Council should have granted planning permission and acted unreasonably in not doing so.

Conclusion

13. The 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. In this case, although I find that the Council has exhibited some unreasonable behaviour, I do not find that this has resulted in unnecessary or wasted expense. An award of costs is, therefore, not warranted.

H Jones

INSPECTOR