



Costs Decision

Site visit made on 7 July 2023

by K Ford MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 July 2023

Costs application in relation to Appeal Ref: APP/W1850/W/22/3311825 The Choughs, 68 Penn Grove Road, Hereford, Herefordshire HR1 1BT

- 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 R Nash for a full award of costs against Herefordshire Council.
 - The appeal was against the refusal of an application for planning permission for erection of proposed detached dwelling house within the curtilage of 68 Penn Grove Road with shared private drive.
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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 other party applying for costs to incur unnecessary or wasted expense in the appeal process. Behaviours and actions prior to the appeal can be taken into consideration of whether or not costs should be awarded.
3. The applicant's claim centres on advice they were given by the Council at the pre-application stage. The main issue is therefore whether the advice given by the Council was misleading.
4. The National Planning Policy Framework identifies that early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. It also states that good quality pre-application discussion enables better co-ordination between public and private resources and improved outcomes for the community.
5. The applicant says positive pre-application discussions encouraged the formal submission of a planning application which was then refused.
6. Pre-application advice is given without prejudice to the formal determination of a planning application and cannot pre-determine the outcome of an application which must take into account all material considerations.
7. The Council made caveats in their advice but a reasonable person reading the letter would conclude that the principle of the development was acceptable and the applicant was not discouraged from submitting an application. Discussions were undertaken to refine the scheme further and the Council acknowledges

the positive tone of the advice given. Based on the advice given it was not unreasonable for the applicant to have progressed with an application.

8. It was not unreasonable for the applicant to expect the advice made by the officer to be consistent with the subsequent decision when it was made under the system of delegation and where the issues were straightforward, as in this case. The application was refused on matters that the Council indicated could be addressed. The pre-application advice was therefore misleading.
9. The Council has referenced other pre application advice given for the site but that related to a very different scheme where the advice was clear and an application was consequently not pursued. It does not explain or justify the approach taken in this case.
10. If the applicant had been actively discouraged from submitting a planning application they would not have incurred the costs of going to appeal. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

11. 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 Herefordshire Council shall pay to Mr R Nash, 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.
12. The applicant is now invited to submit to Herefordshire 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.

K Ford

INSPECTOR