



Costs Decision

Hearing held on 29 June 2023

Site visit made on 29 June 2023

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 August 2023

Costs application in relation to Appeal Ref: APP/A3010/C/21/3273252 Land at south of Dunham Road, Laneham, Worksop, Nottinghamshire, DN22 0NB

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Jerry-Kay Smith for a partial award of costs against Bassetlaw District Council.
 - The appeal was against an enforcement notice alleging the unauthorised engineering operation to deposit materials on and over the land, the change of use of the land for the siting of a residential caravans, and associated storage structures, and the parking of private domestic vehicles.
-

Decision

1. The application for a partial award of costs is refused.

The submissions for Mrs Jerry-Kay Smith (the applicant)

2. The costs application was submitted in writing.

The response by Bassetlaw District Council (the respondent)

3. The response was made in writing.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ("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.
5. Following receipt of the applicant's highway statement, the respondent accepted that adequate visibility could be achieved and that its highway safety concerns could be addressed through the imposition of suitable conditions. It also accepted, in the Hearing, that flood risk could be adequately addressed through the imposition of conditions.
6. The PPG advises that a local planning authority may be at risk of an award of costs if it refuses planning permission on a ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead. While the circumstances of an enforcement notice are different, the principle may reasonably be applied. However, there is no requirement for a local planning authority to commission

the technical reports that would be expected of a planning application to decide whether enforcement action against the same development is expedient.

7. The respondent obtained advice from the highway authority to inform its decision to take enforcement action. While the evidence in the applicant's highway statement proved to be more convincing, it was not unreasonable for the respondent to rely on the advice it had been given up to that point.
8. The respondent did not, however, seek further advice from the highway authority on receipt of the applicant's highway statement. The applicant rectified this by contacting the highway authority direct, which resulted in the respondent confirming, 3 days later, that it would not pursue the highways reason for issuing the notice. The applicant does not seek her costs in producing the highway statement, accepting that it would have been required if a planning application had been made. She would have incurred some costs in communication with the highway authority; however, it has not been shown that those costs were unnecessary or wasted.
9. The respondent accepted in the Hearing that the implementation of the recommendations in the applicant's flood risk assessment would ensure the development would be safe for its lifetime. While this was later in the appeal process than the change of opinion on highway matters, the relevant evidence only became available with the applicant's appeal statement. I therefore do not accept that the respondent was able to determine that highway and flood risk issues could be adequately addressed by conditions before it issued the notice. The respondent therefore did not act unreasonably in doing so.
10. Furthermore, there were other reasons for issuing the notice that could not be addressed by the appellant's highway statement and flood risk assessment. Therefore, it is not clear that, if those issues had never been of concern, the notice would not have been issued. Accordingly, it was not unreasonable of the respondent to maintain its position and to not withdraw the notice.
11. The PPG also advises that preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations may also result in an award of costs. However, development that has already been carried out cannot be prevented or delayed.

Conclusion

12. For the reasons set out above I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Mark Harbottle

INSPECTOR