



Costs Decision

Site visit made on 17 May 2023

by David English BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 August 2023

Costs application in relation to Appeal Ref: APP/N2739/W/23/3314016 Yew Tree House, Main Street, Kelfield, Selby, North Yorkshire YO19 6RG

- 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 Richard Atkinson for a full award of costs against Selby District Council.
 - The appeal was against the refusal of planning permission for the construction of a single storey dwelling to replace existing building.
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Decision

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

Procedural Matters

2. On 1 April 2023 North Yorkshire Council was created and is now the Local Planning Authority (LPA) for the area previously covered by Selby District Council. In my Costs Decision I do not differentiate between the two Councils, given their respective functions as LPA. However, while the application for an award of costs was made against Selby District Council, the award is necessarily made against its replacement as LPA, North Yorkshire Council.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, 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.
4. The PPG indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal; and that all parties are expected to behave reasonably throughout the planning process.
5. The claim for an award of costs is made on both procedural grounds and on substantive matters.

Procedural grounds

6. The applicant claims that the Council acted unreasonably by failing to deal with their planning application in a timely manner and delayed their opportunity to appeal against the Council's failure to make a decision on which work had already commenced.
7. These circumstances arose because the applicant agreed to a request from the Council for an extension of time to allow the application to be presented to the

Planning Committee with, what he was told, would be a recommendation to grant permission. Notwithstanding this agreement the Council subsequently refused the application using its delegated authority.

8. The PPG advises that, although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
9. The Council has not responded to the applicant's claim for an award of costs, and has not disputed, or offered further explanation about, the course of events described by the applicant.
10. I do not find that the applicant's claim that their inability to be represented at a Planning Committee meeting prior to a decision being taken amounts to unreasonable behaviour by the Council. Elected members would be provided with all information relevant to their decision, including any supporting written representations made by the applicant. The applicant's claim in this respect appears to be in the hope that a Planning Committee would have reached a different decision, and this is not a matter relevant to or supportive of a claim for costs.
11. However, I find that the Council behaved unreasonably by seeking an extension of time for the reasons described in the applicant's claim. This behaviour resulted in a delay in the applicant's opportunity to submit an appeal on which work had already started. Given the applicant's reasonable expectation in this case that their proposal would be recommended for permission, the work undertaken on an appeal up to that point was an unnecessary expense.
12. The applicant claims unreasonable behaviour by the Council in that it failed to have regard to the amended plan submitted on 27 July 2022. However, the information provided to me does not demonstrate that the applicant requested that their planning application be determined on the basis of that amended plan. I therefore find that the Council did not act unreasonably by determining the application on the basis of the submitted plans.

Substantive matters

13. The applicant claims that the Council acted unreasonably by failing to have regard to a decision by an Inspector on another appeal which they explain has similarities with the current case. The Council demonstrates that it has noted that previous appeal decision and explains its reasoning in regard to locational and development plan policy differences in both cases, recognising that all applications must be considered on their own merits.
14. However, as I have explained in my decision on the appeal, the Council's understanding of the purpose of Policy SP2 A(c) of the Selby District Core Strategy Local Plan (October 2013) (the Core Strategy) does not stand up to scrutiny. In this respect the Council has misdirected itself in its specific justification for its first reason for refusal, and that reason relies on an accurate interpretation of the purpose of Policy SP2 A(c) of the Core Strategy.
15. I disagree with the assertion that the development should clearly have been permitted and my reasons are set out in my decision letter. However, the Council behaved unreasonably by presenting an inaccurate interpretation of

Policy SP2 A(c). This resulted in the applicant incurring unnecessary or wasted expense in the appeal process.

16. The applicant claims that the third reason for refusal comprises a matter capable of being dealt with by conditions. While I agree with this comment up to a point, and this is reflected in my decision on the appeal, the Council correctly identifies that the agricultural shed through which an access driveway would pass is not identified in the planning application as being proposed for demolition. In this respect the applicant failed to directly identify their intention to demolish that building as part of the development proposal. Accordingly, I find that the Council did not behave unreasonably in this matter.

Conclusion

17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to the Council's procedure in determining the planning application and to the first reason for refusal only, and that a partial award of costs is justified.

Costs Order

18. 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 Yorkshire Council shall pay to Mr Richard Atkinson, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in preparing an aborted appeal against the Council's failure to determine the planning application and in responding to the Council's first reason for refusal of planning permission only; such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicant is now invited to submit to North Yorkshire 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.

David English

INSPECTOR