



Costs Decision

Site visit made on 5 September 2023

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2023

Costs application in relation to Appeal Ref: APP/P2935/W/23/3324404 Land to the north of Southcroft Stables, The Croft, Ulgham, Northumberland

- 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 Thomas Forster (Forric Homes) for a full award of costs against Northumberland County Council.
 - The appeal was against the refusal of planning permission for a new vehicular access to serve four permitted dwellings without complying with conditions attached to planning permission Ref 21/04875/FUL, dated 12 July 2022.
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Decision

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

Reasons

2. 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.
3. The applicant's application for costs is set out in writing. In summary, they state that the same conditional requirements were imposed on the original outline permission but subsequently this was removed following a successful appeal. In this context it is entirely unreasonable for the Council to have re-imposed the same requirement on the new access permission and then to have refused the Section 73 planning application to remove the conditions in question.
4. They further consider that the Council has not provided any evidence or data to contradict the previous appeal Inspector's findings and to demonstrate that there is a significant volume of traffic using Ulgham Lane that would lead to conflicts between pedestrians and vehicles. This amounts to unreasonable behaviour and left the applicant with no option but to appeal. This has been compounded by the Council's inherent failure to substantiate their decision to contradict the findings of the previous appeal Inspector and to present any empirical evidence to justify their position in this regard.
5. In response, the Council states that the C124 (Ulgham Lane) is not a lightly trafficked road and is recognised as a classified road providing links between two primary roads. The previous Inspector visited during the Covid-19 Pandemic and this significantly reduced the number of vehicles on the highway. No evidence or data was provided as part of the application submission to warrant the removal of the conditions. Furthermore, the conditions were significantly amended from those on the original permission and did not require

highway drainage, street lighting or pedestrian dropped kerbs. In addition, the applicant was aware that the conditions were to be imposed before the meeting of the Planning Committee and planning permission would have been refused if the conditions had not been imposed.

6. The Council's basis for assessing traffic movements along Ulgham Lane is that it is a classified 'C' road which provides part of the route between two primary roads. They have however provided no actual data to substantiate their position that it is not a quiet rural lane but instead is one which provides a key route for both existing residential and agricultural traffic. Nor is there any assessment of the characteristics of the road which could enlighten as to whether it does in practice provide a key route that is attractive to drivers, irrespective of its classified status. Whilst the Council refers to the impact of the Covid-19 Pandemic, they do not outline what restrictions were in place on the date that the previous Inspector visited the site, explain to what degree any restrictions may have affected vehicle movement or provide any evidence as to what movements might be typical in normal times.
7. Given the view of the applicant that traffic movements are limited, and the findings of the previous Inspector that this would indeed appear to be the case, the Council's failure to evidence its position means that it has relied upon vague and generalised assertions about how much traffic passes the appeal site, which are unsupported by any objective analysis. Whilst it is pointed out that the applicant did not provide any evidence or data as part of their submission, given the planning history and the findings of the previous Inspector it was incumbent on the Council to do so in this instance, not the applicant, in order to substantiate their position in this regard. As this matter is one of the main considerations in determining whether it is acceptable or not to delete the conditions in question, the Council has behaved unreasonably in not doing this.
8. The Council point out that the conditions subject to the appeal do not require drainage, street lighting or dropped kerbs and are therefore different to those that were before the previous Inspector. However, the conclusion of the previous Inspector was that the provision of the footpath itself was not necessary or reasonable, and there is no suggestion that whether or not it was drained, lit or had dropped kerbs made any material difference to their overall conclusion. The Council also consider it to be of relevance that the applicant did not object to the imposition of the planning conditions in question on the original permission for the new vehicular access, but even if they didn't this does not absolve a planning authority from needing to ensure that any conditions that they impose meet the relevant tests.
9. Whilst the Council says that it would have refused planning permission without the conditions in place, the applicant would have had a right of appeal against that decision. It would appear highly likely that they would have exercised that right, meaning that the Council would have ended up in the same position as it is now in, in having to defend at appeal the position it had taken on the need for the footpath. The considerations relating to the different wording of the conditions, the applicant's perceived agreement to them and that planning permission would have been refused without them therefore do not add any substance to the Council's costs defence.

10. In conclusion, the Council imposed the conditions requiring the footpath and has not been able to substantiate or evidence this as reasonable and necessary in the circumstances of the case and in the context of the previous appeal decision. This represents unreasonable behaviour as set out in the PPG and has resulted in the applicant incurring unnecessary and wasted expense in having to submit an appeal. A full award of costs is therefore warranted.

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 Northumberland County Council shall pay to Mr Thomas Forster (Forric Homes), 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 Northumberland County 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.

Graham Wraight

INSPECTOR