



Costs Decision

Site visit made on 17 August 2023

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Decision date: 3 October 2023

Costs application in relation to Appeal Ref: APP/E2340/W/23/3314458 Land to the west of Brookside Garage, Dean Street, Trawden

- 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 Pin Zhao, Trawden Water Ltd for a full award of costs against Pendle Borough Council.
 - The appeal was against the decision of the Council to refuse planning permission for development without complying with conditions subject to which a previous planning permission was granted. The planning application sought planning permission for the demolition of outbuildings/sheds and erection of 20 No. 3 & 4 bed properties comprising 3 terraced, 14 semi-detached and 3 detached dwellinghouses with associated parking and vehicular access from Dean Street and Skipton Road without complying with condition No. 18 attached to planning permission Ref 20/0865/FUL, dated 26 October 2021.
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Decision

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

Reasons

2. 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. The PPG provides examples of circumstances which may lead to an award of costs against a local planning authority.
3. The PPG makes it clear that a local planning authority is at risk of an award of costs if it prevents development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations. Authorities are not bound to accept the recommendations of their officers, but the PPG states that local planning authorities are at risk of an award of costs if they fail to produce evidence to substantiate each reason for refusal and/or rely on vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. In this case, the Council's Planning Committee decided to refuse the application contrary to advice of their professional officers who had produced a written report analysing the viability of the proposal. This was based on a detailed financial viability appraisal submitted by the Appellant which was subject to independent professional scrutiny by consultants acting on behalf of the

Council. In general terms, this concluded that the requirement for any affordable housing would result in the development not being financially viable.

5. The Council refused planning permission on the basis that the viability assessment does not accurately reflect the viability position and that it has not been adequately demonstrated that the financial viability of the development would be unacceptably impacted by the affordable housing obligation (as set out in condition No. 18). However, during the consideration of the application prior to, and at, Planning Committee, no contrary technical evidence was obtained by the Council to support a contention that the conclusions of the submitted financial viability appraisal may be incorrect. Furthermore, no such contrary evidence was provided by the Council during the appeal process.
6. I have found that the viability evidence provided by the Appellant prior to the consideration of the application by the Council, and as part of the appeal submission, is robust. It clearly identifies that the affordable housing requirement, as set out in Condition No. 18, would render the scheme unviable.
7. The Council's decision to refuse the application was not supported by any technical objective analysis that may have contradicted the findings of the Appellant's viability appraisal or the independent consultants acting on its behalf. There was no robust and compelling contrary evidence to support the reason for the refusal of planning permission and how the scheme may be considered viable with the affordable housing provision. Furthermore, no evidence has been provided in the appeal to substantiate the reason for refusal and the Council has not submitted a rebuttal to the costs application.
8. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, the proposal should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the guidance in the National Planning Policy Framework and the PPG. Consequently, the Appellant has been faced with the unnecessary expense of lodging the appeal.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

Costs Order

10. 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 Pendle Borough Council shall pay to Mr Pin Zhao, Trawden Water Ltd, the costs of the appeal proceedings described in the heading of this decision.
11. The Appellant is now invited to submit to Pendle Borough 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. In the event that parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Stephen Normington

INSPECTOR