



Costs Decision

Site visit made on 15 August 2023

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th October 2023

Costs application in relation to Appeal Ref: APP/T2405/W/23/3318532 43 New Street, Blaby, Leicestershire LE8 4GT

- 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 Perry for a full award of costs against Blaby District Council.
 - The appeal was against the refusal of planning permission for erection of 12 dwellings with associated vehicular access, parking and landscaping and drainage including demolition of 43 New Street, Blaby.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance 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. I will initially address the second ground of the appellant's claim, which is that the Council's case appears to invite the Inspector to determine matters that are not within my jurisdiction. However, as can be seen from my Appeal Decision, I have concluded that the potential for the Waste Collection Authority (WCA) to refuse to collect waste from the site is a material planning consideration. Although ultimately it may be for the Courts to determine whether the WCA can be compelled to collect household waste from the site, in the absence of such a decision from the Courts it is reasonable for both myself and the Council to have regard to this as a possibility. I therefore do not conclude that the Council has behaved unreasonably in its consideration of S.45(a)(i) of the Environmental Protection Act 1990 (the EPA).
4. An alternative scenario is that a Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 could compel the appellant and their successors in title to implement a private waste collection service. I have concluded that a completed UU enables me to be satisfied that adequate arrangements for the collection of household waste and its disposal would be in place. However, a completed UU was only provided relatively late in the appeal process. The Council raised a number of detailed concerns on a draft UU that had been provided to it, and it is only on the basis of an amended and completed UU that I have been able to conclude that this meets the requirements of S.45(a)(ii) of the EPA.

5. I note the appellant's comments about the lack of engagement from the Council in respect of amendments to the UU. However, given the late stage of the submission of the UU and nature of the amendments, as well as the technical and detailed nature of the issues raised, I do not consider that the Council's concerns on this matter, including in its original decision and Statement of Case, are so without foundation or substantiation as to represent unreasonable behaviour.
6. Turning to the first ground of the appellant's claim, this contends that the Council has an in-principle objection to the use of unadopted highway, and emphasises that this is couched in terms of the Council's refuse vehicles. The appellant is also of the opinion that the Courts are likely to compel the WCA to collect waste from the appeal site. However, this potential imposition on the Council adds weight to its consideration of the issue of accessing the appeal site with regards to both its current and future fleet of vehicles.
7. The Council has also referred to liability claims arising from damage to the unadopted road and other private property from waste collection vehicles. Although I have concluded that the UU would indemnify the Council against such claims, the concerns of the Council are not fundamentally unfounded both in respect of the existing or future vehicle fleet.
8. Drawing the above together, although I have concluded that the proposal would make suitable provision for the collection of household waste, the Council's concerns are not without substantiation. The Council has set out its case, and although I have allowed the appeal, I consider that the Council has provided an appropriate objective analysis of its concerns and that these are not totally without merit.
9. I have also concluded that the obligations of the UU would address the main issue, but given the detailed issues raised by the draft and completed UU the Council's concerns are not so illegitimate or unfounded as to represent unreasonable behaviour.
10. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is not therefore justified.

David Cross

INSPECTOR