



Costs Decision

Site visit made on 31 October 2023

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st November 2023

Costs application in relation to Appeal Ref: APP/X4725/W/23/3319447 Land off Colorado Way, Castleford

- 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 Roberts for a full award of costs against Wakefield Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for mixed use development of 9 commercial units (classes B2, B8 and E) and 2 buildings for use as car sales incorporating green roofs, green walling, renewable energy technologies and associated landscaping.
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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. Unreasonable behaviour may be procedural and/or substantive.
3. In summary, the applicant argues that the Council has acted unreasonably by deferring a decision on the application when there was no need to, resulting in an unnecessary and unreasonable delay; by failing to substantiate the reason for refusal that the Council would have applied had it been in a position to determine the application; and making vague and generalised assertions about the proposal's impact. The Council contends that it has not acted unreasonably.
4. The appeal with which this application for an award of costs is associated arose from the failure of the Council to reach a decision within the statutory timescale. Not reaching a decision on a planning application is not, of itself, grounds for a successful claim for costs, frustrating though delays caused by such inaction can be. There is provision for recourse, that being the process under which this appeal is submitted.
5. Based on the evidence before me, the reason for the lack of a decision from the Council within the required time period is the decision of the Council's Planning and Highways Committee (the Committee) at its meeting in March 2023 to defer its decision to allow the applicant to investigate the possibility of reducing the height of the buildings and to get an updated traffic survey for the area.
6. To confirm what decision members would have made if they were the decision maker, officers took the proposal back to the Committee in June 2023. The

Committee advised that it would have refused permission for the proposal due to the harm that the scale, design and layout of the proposed buildings would have on the occupiers of surrounding residential properties.

7. I have noted the recommendation of the Council's officers which was for approval. The Committee is not duty bound to follow the advice of its officers as long as its contrary decision is made on planning grounds and clear evidence is provided to substantiate that reasoning.
8. Reference is made to separation distances within a residential design guide. Nevertheless, this is guidance and requires an element of judgement on site specific matters. I consider that the Council's putative reason for refusal is a matter of judgement. I appreciate that information had been submitted with the application showing the relationship of the proposed buildings to the nearby dwellings and that the officer report may have set out an assessment of the relationship between the two and found it acceptable. Nevertheless, the proposal includes quite sizeable buildings that would be located within the vicinity of residential properties. While I do not agree with the Council's position, I can understand the Committee's concern about the effect the proposal would have on the living conditions of residents.
9. The Council sets out its position on the height of the buildings and its effect on the living conditions of residents in its appeal statement. While light and contrary to my own findings, this has been done in sufficient detail to be able to demonstrate why the proposal was considered to be unacceptable and this is framed within the context of the development plan, with the relevant policy identified.
10. The PPG states that where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application. I find this to be the case with the Council's putative reason for refusal, notwithstanding the fact that I have come to a different conclusion to the Council regarding the acceptability of the proposal. I do not therefore consider that the Council has acted unreasonably in this regard.
11. The other reason given for deferral related to getting an updated traffic survey in the area. I note the Council's arguments on this matter. Nevertheless, given that highway safety did not form part of the Council's putative reason for refusal, it appears to me that the Council was satisfied with the proposal in this regard, based on the information that it already had. This is in the context of the consultation response from the Highway Authority which sets out that the proposal would be acceptable in terms of access visibility, the capacity of the network including junctions, and parking provision. Although a copy of the officer report for the appeal proposal is not before me, it is usual for consultee comments to be summarised and/or form part of the officer assessment and therefore it is reasonable to conclude that the Committee was aware of the Highway Authority's position. Consequently, in my view, the request for an updated traffic survey was unnecessary.

12. Notwithstanding this, it seems to me from the reason the Council gave as to what would have been its view on the scheme, that an appeal would not have been avoided.
13. However, the applicant understandably considered it necessary to address potential concerns about highways matters in their appeal statement. In this respect, I consider that the Council's actions have amounted to unreasonable behaviour that has caused the applicant to incur unnecessary or wasted expense.

Conclusion

14. I find that the Council did not behave unreasonably in terms of the issue relating to the effect of the proposal on the living conditions of nearby residents. However, I find that it did behave unreasonably in terms of the issue concerning highways. As such, in respect of highways matters, the applicant's costs in pursuing that aspect of the appeal were unnecessarily incurred and wasted. For this reason, and having regard to all other matters raised, a partial award of costs is justified.

Costs Order

15. 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 Wakefield Council shall pay to Mr Roberts, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing highways matters; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to Wakefield 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.

F Wilkinson

INSPECTOR