



Costs Decision

Site visit made on 24 October 2023

by F Harrison BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2023

Costs application in relation to Appeal Ref: APP/E2734/W/23/3325978 Land to South of Limebar Lane, Marton cum Grafton, Harrogate YO51 9QJ

- 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 Harmby Homes Ltd for a full award of costs against Harrogate Borough Council.
- The appeal was against the refusal of the Council to grant planning permission for the erection of 1 dwelling, garage, stable and various landscaping works including driveway, installation of solar panels, ground source heat pump and log burner.

Decision

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

Preliminary 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 Harrogate Borough Council. In my decision I do not differentiate between the two Councils, given their respective functions as LPA. I have used Harrogate Borough Council in the banner heading above as this is the name of the LPA shown on the application for costs.

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 applicant is seeking a full award of costs and contends that the Council acted unreasonably by ignoring an alleged extant permission as a fallback position, in relation to both of the reasons for refusal, on both procedural and substantive grounds. It is alleged that this unreasonable behaviour led to the unnecessary expense of appealing the decision.
5. I have carefully considered the Council's contention that when the application was determined there was no evidence at the time of the site visit to indicate that development had commenced with regard to a previous permission at the site¹ and that no substantive evidence was provided with the application to support the claim of their being a fallback position at the site. While the fallback position may not have been certain, the issue was, nevertheless, an important factor in the assessment of the application owing to the representation made by the Parish Council and neighbouring residents, and an

¹ Ref: 19/03390/FUL

ongoing enforcement case which the case officer was aware of, as demonstrated in email correspondence provided by the applicant. Given this context, it was unreasonable for the Council to have concluded in the officer report that the previous permission at the site was no longer valid and that there was no fallback position.

6. As such, while there may have not been a clear fallback position, the potential was known, and was a material consideration which the Council failed to consider in sufficient detail in determining the application. In the absence of any objective analysis, including the weight to be attributed to the fallback position and the differences with the appeal development, the failure of the Council to fully assess and take any fallback position into account is unreasonable behaviour.
7. As it can be seen from my decision, the fallback position was a determinative factor in my consideration of the location of the development with regard to the first reason for refusal. However, even if a more thorough analysis of a fallback position had been carried out by the Council, the status of the previous permission at the site was not certain at the time of the application, and based on the evidence before me, it is not likely that the Council would have concluded that the any potential fallback was a sufficient material consideration that would override the conflict with the development plan in relation to development outside of the settlement limits.
8. The Council did adequately set out in the officer report the reasons why it considered the proposal conflicted with the development plan with regard to the second reason for refusal and the effect of the proposal on the character and appearance of the area. Within the Council's appeal submissions, on balance, I consider the Council made sufficient efforts to substantiate this reason for refusal. Moreover, the case was made that the existence of any fallback position established by a certificate of lawfulness submitted after the application was determined², would not be sufficient to outweigh the conflict with the development plan in relation to the second reason for refusal. Even if the Council had properly considered the fallback position at the application stage, owing to their assessment of the scheme and the perceived differences to the previous permission at the site, the Council would have been unlikely to have come to a different conclusion.
9. The appeal could not therefore have been avoided and the applicant would have had to defend both reasons for refusal.

Conclusion

10. To conclude, while I consider that the Council acted unreasonably, I do not consider that it has resulted in unnecessary or wasted expense and the application for an award of costs is refused.

F Harrison

INSPECTOR

² Ref: ZC23/02934/CLEUD