
Costs Decision

Site visit made on 2 October 2023

by T Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2023

**Costs application in relation to Appeal Ref: APP/C2708/W/23/3316871
Land off Meadow Lane/Meadow Close, Cononley, Keighley Easting (x)
339172 Northing (y) 447008**

- 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 Calvert Homes (Cononley) Ltd for a full award of costs against North Yorkshire Council.
 - The appeal was against the refusal of the Council to grant planning permission for the Erection of 27 no. dwellings.
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Decision

1. The costs application is allowed in part and partial costs are awarded.

Reasons

2. The Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour on a substantive or procedural basis has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The Council refused the application to them on 8no. grounds at planning committee against officer advice. These grounds related to Affordable housing contributions; Housing density and mix; Highway safety and impact on the highway network; Flood risk; Harm to the setting of designated heritage assets; Failure to optimise renewable and low carbon energy sources; Amenity of the occupiers of Meadow Close; and exceeding the growth capacity of the area and impact on basic services.
4. However, the Council subsequently confirmed within its statement that it would defend the appeal only on one of those original grounds relating to the setting of designated heritage assets. There is nothing to indicate that the claimant was advised of this new position of the Council prior to submitting its appeal in relation to the original 8.no grounds.
5. The application for costs is made effectively as a result of withdrawing reasons for refusal on appeal. It is also claimed that the remaining refusal reason that the Council chose to defend was in the words of the claimant, spurious.
6. It was not unreasonable for members to come to a different conclusion on the application through the planning committee process to Officers who had recommended that the application was approved within their report. The committee were entitled to take a different approach, in principle.

7. However, it appears that the claimant prepared their detailed appeal case in response to the refusal on the basis of all eight of the Councils original concerns, only one of which was retained and defended on appeal. The Council indicate that they only reviewed the case upon receiving notice of a valid appeal. Had the claimant known of that position earlier, they may have been able to avoid the costs associated with preparing their case on all of the original grounds.
8. The Council has therefore behaved unreasonably by withdrawing the vast majority of the original reasons for refusal after the claimant had expended time and cost on seeking to address them. Costs are therefore awarded to the appellant with regard to those that were incurred in countering refusal reasons 1, 2, 3, 4, 6, 7 & 8.
9. Whilst I have come to a different conclusion relating to matters surrounding refusal reason No. 5, the Council were entitled to arrive at that final position. Evidence has been supplied with the appeal to support that conclusion.
10. The previous appeal decisions relating to the development on site appear to relate to developments that are not identical to that before me and may not therefore have raised all the same issues. With regard to the costs claim I do not therefore find that they imply in themselves that the retained refusal reason and position of the Council on that matter was unreasonable. I therefore find no unreasonable behaviour in this regard.

Conclusion

11. Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to procedural matters relating to the process or substantive matters relating to the issues arising from the merits of the appeal.
12. I therefore find unreasonable behaviour that has resulted in unnecessary and wasted expense in the appeals process. A partial award of costs is subsequently justified with regards to costs associated with contesting refusal reasons 1, 2, 3, 4, 6, 7 & 8.

Costs Order

13. 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 North Yorkshire Council shall pay to Calvert Homes (Cononley) Ltd 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.
14. The applicant is now invited to submit to North Yorkshire 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.

T Burnham

INSPECTOR