
Costs Decision

Site visit made on 13 September 2023

by S Brook BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 December 2023

Costs application in relation to Appeal Ref: APP/F2415/W/23/3319293 Land at Melton Road, East Langton LE16 7TG

- 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 Malcolm Foulkes-Arnold for a full award of costs against Harborough District Council.
 - The appeal was against the refusal of planning permission for 'Creation of a veterinary building with associated car park works for Rutland Veterinary'.
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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.
3. The PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples include preventing development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The appellant states that the Council has acted unreasonably in relation to the two grounds for refusal, both of which relate to highway safety matters. The appellant contends that the Local Highway Authority (LHA) has inconsistently and incorrectly interpreted policy by resisting any new access, or intensification of use of an existing access, simply because it is located on a classified road, as set out in Section IN5 of the Leicestershire Highway Design Guide (LHDG), rather than considering whether a safe access can be provided. If this had been done, then the appellant contends that there would not have been any highway concerns identified and planning consent would have been forthcoming. As a result, the advice of the LHA has mis-directed the Council in its determination of the application.
5. There is no dispute between the main parties that the Council and the LHA engaged with the applicant at the planning application stage and responded in a timely and efficient manner to the issues surrounding highway safety.

Additionally, I note that in setting out its reasons for refusal, the Council's decision notice references Policies GD8 and IN2 of the Harborough Local Plan 2011 to 2031, Adopted 30 April 2019 (LP), as well as paragraphs 110 and 111 of the National Planning Policy Framework (NPPF), in addition to LHDG Section IN5.

6. However, having considered the Council's Officer Report (OR) and the consultation responses from the LHA on which this relies, the outstanding concern does appear to be that the proposed development would lead to an intensification of use of the existing access onto an unclassified road, which would be 'fundamentally contrary to Section IN5 of the LHDG'. Neither the final consultation response from LHA, nor the OR, go on to objectively analyse and explain in detail what the impact of this would be on highway safety and the surrounding road network, instead relying on vague assertions about its impact.
7. Whilst the development would generate extra traffic onto the adjoining road, this is insufficient to demonstrate the development would lead to highway safety issues. The LHA response to the planning application confirmed that the layout of the access meets the required standards of the LHDG, as do the achievable visibility splays, and that no collision patterns would be exacerbated. It is incumbent on the Council and the LHA therefore, to clearly show how any increased use of the access would prejudice highway safety.
8. Whilst I acknowledge that the LHA has prepared an appeal statement, for the reasons set out in the appeal decision, this also fails to provide substantive evidence demonstrating how an increased use of the access would prejudice highway safety. As such, I find the two highway refusal reasons to be based upon a rigid interpretation of highway guidance, and generalised assertions and un evidenced assumptions about the impact of traffic associated with the development.
9. I understand that in reaching a decision on the application, the Council has relied on the advice of the LHA. However, ultimately the Council is the decision-maker, and it must be satisfied that any recommendations for refusal by statutory consultees are based on evidence, sound reasoning and a correct understanding of the relative roles of the development plan, the NPPF, and highways guidance in the decision-making process. This has not been the case, and so the Council has acted unreasonably.
10. The appellant has had to prepare and submit evidence in response to the Council's refusal reasons and its associated appeal submissions. As such, the appellant has incurred unnecessary expense. As these are the only grounds for refusing the planning application, a full award of costs is justified to cover the appellant's expense in contesting the Council's case on the safety and suitability of the access to the development.

Costs Order

11. 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 Harborough District Council shall pay to Mr Malcolm Foulkes-Arnold, the costs of the appeal proceedings described in the heading of this decision limited to

those costs incurred in the submission of this appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to Harborough District 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.

S Brook

INSPECTOR