



Costs Decision

Site visit made on 12 December 2023

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th January 2024

Costs application in relation to Appeal Ref: APP/P2365/W/23/3324944 Newstead, Parrs Lane, Aughton, Lancashire L39 5BP

- 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 Joseph Fay for a full award of costs against West Lancashire Borough Council.
 - The appeal was against refusal of planning permission for erection of two residential dwellings after demolition of existing dwelling and associated works (resubmission of planning application 2021/0021/FUL).
-

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, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and, that the unreasonable behaviour has directly caused the party applying for costs to incur unnecessary and wasted expense in the appeal process.
3. Paragraph 049 of the PPG¹ indicates that local planning authorities will be at risk of a substantive award being made against them for, amongst other things preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; and not determining similar cases in a consistent manner.
4. The applicant claims, in summary, that the Council acted unreasonably in not permitting a scheme which complied with local and national policy on the grounds that a sequential test was not required as the site is allocated and, therefore, had already been subject to the sequential testing through the Local Plan. As a further matter, the applicant has submitted evidence of other developments within the same area where the sequential test was not requested and, therefore, the appellant claims that the Council have not been consistent in its decision making.
5. The Council have rebutted the claim advising that the site, as Safeguarded Land, is not allocated and provided copies of correspondence between the main parties to evidence this.

¹ Paragraph: 049 Reference ID: 16-049-20140306

6. As detailed in my formal decision I do not have compelling evidence that the site was sequentially tested as part of the local plan process. As such there would be a need for a site-specific sequential test if the development falls within one of the constraints listed in Footnote 59 of the National Planning Policy Framework. Although I have considered the submitted Sequential Test Statement in making my formal decision, I am not wholly convinced that a sequential test was required for the appeal proposal. However, I also do not have compelling evidence to show that it was not required.
7. Notwithstanding this, the applicant has provided details of two appeals² on other parts of the Safeguarded land, considered under the same policies, where the sequential test was not required and not considered within the submitted Statements of Common Ground relating to drainage and flood risk matters. Another site, for the Former Saw Mill³, has also been referred to by the appellant and the officer report provided does not suggest that a sequential test was required.
8. Although I do not have the full details of any of the above sites, from the Flood Risk Assessment submitted with the current appeal the sites referred to by the applicant all have the same flood risk as the site at Newstead. The Council have not justified taking a different position on the current appeal. For these reasons there is evidence before me that the Council have acted inconsistently in requiring a Sequential Test for the appeal site.
9. The Council have, therefore, not been consistent in its decision making and this has resulted in unreasonable behaviour on behalf of the Council. The unreasonable behaviour has directly caused the applicant unnecessary and wasted expense in submitting the Sequential Test Statement.

Conclusion

10. For the above reasons, I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

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 West Lancashire Borough Council shall pay to Mr Joseph Fay the costs of the appeal proceedings described in the heading of this decision.
12. The applicant is now invited to submit to the 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

K Townend

INSPECTOR

² Appeal ref: APP/P2365/W/15/3132594 & APP/P2365/W/15/3132596

³ Council ref: 2023/0194/OUT