



Costs Decision

Site visit made on 12 December 2023

by K Allen MEng (Hons) MArch PGCert ARB

an Inspector appointed by the Secretary of State

Decision date: 24th January 2024

Costs application in relation to Appeal Ref: APP/M2840/W/23/3323812 11 Higham Road, Rushden NN10 6EB

- 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 Antonio Di-Fazio for a full award of costs against North Northamptonshire Council.
 - The appeal was against the grant subject to conditions of planning permission for the demolition of existing dwelling and erection of 6 dwellings.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG states that awards may be either procedural in regard to behaviour in relation to completing the appeal process or substantive, which relates to the planning merits of the appeal.
3. The applicant is seeking a full award of costs on substantive grounds. It is alleged that the Council has acted unreasonably by imposing a condition that is not necessary or reasonable, and thus does not comply with the guidance in the National Planning Policy Framework (the Framework) on planning conditions.
4. A previous appeal decision¹ has been brought to my attention which comprised seven dwellings. The previous access and the access before me are largely the same and are not designed to an adoptable standard as per the Northamptonshire Highways Standards. Although the appeal was dismissed on other grounds, the inspector concluded that subject to a suitable management and maintenance condition regarding the areas of shared driveway, the proposed access would be able to provide for the requirements of the proposed development and would not detrimentally effect highway safety. Condition 4 adequately provides for the required maintenance and management plan.
5. Therefore, due to the similarities between the schemes and the weight which should be attributed to previous appeal decisions, a condition requiring the proposed access to be constructed to an adoptable standard is not necessary and it is unreasonable for the Council to impose such a condition.

¹ Appeal Reference: APP/G2815/W/21/3277113

6. Whilst I understand that the meaning behind the previous inspectors wording could be interpreted differently, it would not be possible to accommodate an access constructed to an adoptable standard without significant changes to the proposed site plan, creating conflict between the imposed conditions. Ultimately, it is unreasonable to impose a condition which cannot be complied with.
7. Therefore, I conclude that by imposing a condition that was not necessary or reasonable, unreasonable behaviour resulting in unnecessary expense at appeal stage, as described in the PPG, has been demonstrated and a full award of costs is justified.

Costs Order

8. 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 Northamptonshire Council shall pay to Mr Antonio Di-Fazio, 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.
9. The applicant is now invited to submit to Northamptonshire 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.

K Allen

INSPECTOR