



Costs Decision

Site visit made on 2 January 2024

by G C Bayliss BA MA MA MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 31 January 2024

Costs application in relation to Appeal Ref: APP/D2510/W/23/3319749 Land at the rear of Style Furniture, Main Road, Fotherby, Louth, Lincolnshire LN11 0TD

- 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 Miss Kelly Casswell for a full award of costs against East Lindsey District Council.
 - The appeal was against the refusal of an application for change of use of land for the siting of caravans (lodges).
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Decision

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

Reasons

2. 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 thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. The guidance encourages authorities, amongst other things, to properly exercise their development management responsibilities, and rely only on reasons for refusal which stand up to scrutiny based on the planning merits of the case.
3. The applicant submits that the Council has acted unreasonably in that members of the planning committee struggled to reach a clear and unambiguous reason for refusal and did not appropriately apply planning policy. It is further suggested that the members were keen to vote before a reason for refusal had been identified and the Council's legal officer had to provide guidance on possible grounds for refusal and reasoning and warned of the potential for an application for costs. The applicant alleges that the reasons for refusal given by the members of the committee were neither fully considered nor based on a sound application of the Council's policies and suggests that the Council's case was created after the event.
4. The applicant suggests that it was grossly unreasonable and unfair to question at committee whether the local plan policy was wrong, especially in relation to the status of Fotherby as a 'medium village'. This had not been raised during

the consideration of the application. Furthermore, it is suggested that the decision failed to take account of the professional advice of the planning officer who had negotiated with the applicant and recommended the scheme for approval. It is suggested that the Council's objections are therefore not supported by professional expertise or stand up to scrutiny.

5. It is further alleged that no material planning evidence was offered to support the reasons for refusal, with only general assertions made by members of the committee. Finally, the applicant refers to administrative errors in issuing an undated decision notice which contributed to further unnecessary delays.
6. Whilst the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached, the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. It is apparent to me that the principle of the development was clearly supported by the relevant policies in the development plan, subject to meeting the necessary criteria. The applicant appears to have worked closely with the planning officer during the determination of the application with no suggestion that the policies may not be up to date. It was unreasonable and unfair to question the validity of the Council's own policies in this way at the planning committee. There may have been a review of the local plan underway at the time of the Council's decision with a debate about settlement hierarchy considerations, but this is a separate formal process. In the meantime, there was no suggestion to me that this should undermine the Council's adopted policies. There may have been concerns surrounding service provision and facilities within the village, but this is not a stated criteria within the policy. Furthermore, I was presented with no adequate evidence as to why this matter should lead me to find against this proposal.
7. Despite the advice of the Council's legal advisor and warnings about a potential application for costs, members of the committee appeared eager to refuse the scheme before they had adequately arrived at appropriate reasons for refusal. Based on those reasons for refusal, it is clear to me that the legal advisor and planning officer may have struggled to interpret the intent of the committee and to find suitable policy reasons to support the refusal. The application was therefore not determined with full regard to the details of the proposal, nor was it determined with proper consideration of the development plan and the National Planning Policy Framework (the Framework).
8. With reference to the alleged harm to the tranquillity and qualities of the village and the wider AONB, the Council failed in its appeal statement to clearly explain or substantiate the alleged harm. The Lincolnshire Wolds Countryside Services raised concerns regarding the loss of pasture land resulting in a detrimental change to the rural character of the designation. However, in my view this does not adequately substantiate the reason for refusal, especially regarding any harm arising from traffic and footfall or to explain why it would be a determinative matter. Furthermore, there was no objection from the Council's environmental health officer. Also, as part of the appeal statement, the Council broadened this objection to refer to more general noise and disturbance, including harm from light pollution. Again, matters which were not adequately evidenced or substantiated.
9. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other relevant

considerations, the development proposed should reasonably have been permitted. As a consequence, development costs have been increased in respect of further professional fees incurred in pursuance of an unnecessary appeal and resulted in avoidable delay. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the guidance in the Framework and the PPG.

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an 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 East Lindsey District Council shall pay to Miss Kelly Casswell the costs of the appeal proceedings described in the heading of this decision.
12. The applicant is now invited to submit to East Lindsey 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.

G Bayliss

INSPECTOR