



Costs Decision

Hearing Held on 6 September 2023

Site visit made on 7 September 2023

by H Heward BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 07 February 2024

Costs application in relation to Appeal Ref: APP/E2734/W/23/3323742 Chapel Field, Marton Cum Grafton, Easting 441510 Northing 463198

- 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 North Yorkshire Council for a full award of costs against J N Bentley Properties Ltd.
 - The appeal was against the refusal of the Council to grant planning permission for two self-build residential dwellings (Use Class C3) with detached garages, associated access, parking and landscaping.
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Decision

1. The application for costs is refused.

Reasons

2. Irrespective of the outcome of an appeal, Planning Practice Guidance (PPG) on Gov.UK advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. It is not concerned with behaviour during the application process.
3. Unreasonable behaviour in the context of an application for an award of costs may be either procedural relating to the process, or substantive relating to the issues arising from the merits of the appeal. Paragraphs 052 and 053 of the PPG provide examples of unreasonable behaviour.
4. The preparation of a Statement of Common Ground (SoCG) requires work by both parties. The Council's concerns in this regard relate mainly to inconvenience and lack of cooperation. For example, the case officer completed amendments within three hours of the close of a meeting in order to keep to the deadline for submission. I recognise the Council's frustrations, but work on a SoCG, including revised iterations, is a matter that the Council could have reasonably expected to undertake.
5. The Procedural Guide advises that draft planning obligations should be submitted no later than 10 working days before the hearing. The Appellant provided the Council with a draft Unilateral Undertaking (UU) on 24 August, updated 5 September 2023, responding in part to comments made by the Council on the first draft. The Council did not have much time to respond to the UU, people may have had to be moved from other work to respond and other officer deadlines may not have been met. The Appellant's timings left

- something to be desired, but that is not to say they caused unnecessary or wasted expense.
6. Whether or not the proposal amounted to Self-build was one of the Council's Reasons for refusal and a main issue in the appeal decision. I did not agree with the case made by the Appellant, but I find nothing unreasonable in the Appellant seeking to argue their case.
 7. Advice on the Planning Practice Guidance is clear that local authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.¹ That the Council considered there to be significant shortcomings in the Self-build provisions put forward in the UU is still not evidence that the Appellant behaved unreasonably.
 8. Similarly, I did not agree with the Appellant that other provisions in the UU, such as to gift land and maintenance monies, met the necessary legal tests. But that is not to say that the Appellant was unreasonable in seeking to argue that they did. Work on a UU including seeking legal advice, is work that the Council should have reasonably expected to undertake, including case officer, peer and manager reviews.
 9. There is insufficient evidence that the Appellant's behaviour in relation to the SoCG and UU directly caused the Council to incur unnecessary or wasted expense at appeal.
 10. The Appellant's representatives submitted information as part of the determined application which, according to the Appellant at the Hearing, was inconsistent in relation to the detailing of proposed land levels and degree of 'cut away' required to site the dwellings in the vicinity of the veteran tree. The Appellant submitted amended plans to resolve the discrepancies upon lodging the appeal. For their part, the Council's officers had not identified the discrepancies in the plans determined by the Council. Whenever it became apparent, it was a matter that the Council needed to address at some point during the appeal process.
 11. Late changes made at appeal relating to a footpath close to two Ash trees were minor, and ones that the Council's Arboricultural Officer took in his stride at the hearing. They were submitted to address a reason for refusal.
 12. All in all, the time spent on the Council's evidence in relation to amended plans would not have been materially different from that which the Council could reasonably have expected. For example, a discussion of whether conditions would have been able to make the development acceptable in relation to the two Ash trees. On balance, I am not persuaded, from the written submissions or the events at the hearing, that matters in relation to the amended plans resulted in any more time being taken on these issues, or the calling of witnesses that would have otherwise occurred.
 13. The Council's Principal Ecologist responded to the Statement of Case, acknowledging that the Appellant was attempting to overcome the concern in respect of Great Crested Newts, however it was unclear whether a licence would be granted and there remained insufficient information to assess the

¹ Paragraph: 003 Reference ID: 23b-003-20190901

harm to the habitat of Great Crested Newts. A signed Natural England Great Crested Newt District Level Licencing Impact Assessment & Conservation Payment Certificate form in respect of Great Crested Newts was received 23 August and the necessary location plan followed on 29 August. The Appellant recognised there had been an oversight and the Council's Ecologist explained that aspects of the Natural England procedure had also impacted. At the Hearing, the Council's Ecologist confirmed that the information submitted was satisfactory and the time spent on this issue amounted to no more than a few minutes. The ecologist's time at the hearing also included contributing to the discussion on the veteran tree.

14. Regardless of whether the response relating to this matter was made by the Council before, during or after the Hearing, it is another matter that the Council could have reasonably expected to be invited to comment on during the appeal process. The matter has therefore not directly caused the Council to incur unnecessary or wasted expense in the appeal process.

Conclusion

15. Having considered all other matters raised I conclude that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has not been demonstrated. The application for an award of costs fails.

Helen Heward

INSPECTOR