



Costs Decision

Site visit made on 12 February 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2024

Costs application in relation to Appeal Ref: APP/X1355/W/23/3332880 Land east of playground, Bluebell Drive, Spennymoor DL16 7YF

- 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 Brian and Pam Sneath for a full award of costs against Durham County Council.
 - The appeal was against the refusal of planning permission for change of use of land from public open space to domestic garden and enclosure with 1.8 m high brick wall and timber fence.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. Paragraph 49 of the PPG states that Local Planning Authorities are at risk of an award of costs where there is a '*failure to produce evidence to substantiate each reason for refusal on appeal*' or where there are '*vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.*'
4. The appellants claim that the local planning authority (LPA) has not substantiated its reason for refusal in its delegated officer report and consider that in responding to the application for an award of costs it has added to its appeal case. Furthermore, the appellants state that the comment made by the LPA that pre-application discussions took place is incorrect. They comment that the LPA has disregarded their statement of case and has not engaged properly in the appeal process. Furthermore, they state that contrary to the comments made by the LPA, the land has not become overgrown has a consequence of being purchased by them.
5. In response to the appeal, the LPA did not submit a statement of case and instead relied upon its delegated officer report. While the appellants do not share the views expressed in the delegated officer report, I am nonetheless satisfied that the LPA did substantiate its reason for refusal. The delegated officer report is sufficiently detailed, and reference is made to relevant planning policies. I do not therefore find that the LPA made vague or generalised assertions about the impact of the appeal development.

6. In response to the appellants' costs application, the LPA state that pre-application advice was sought and that it had indicated that *'the proposal would likely be considered unfavourable'*. On the evidence that is before me, I cannot be certain whether some sort of formal or informal written or verbal advice was given by the LPA prior to the submission of the planning application. I cannot therefore be certain if this was an unreasonable comment and without justification. Even if the comment were not justified, and hence amounted to unreasonable behaviour, I do not find that it has resulted in wasted time and expense in the appeal process. This is because the absence or otherwise of pre-application advice was not a determinative matter in respect of the consideration of the appeal. This comment, whether unreasonable or not, has made no difference to the consideration of the main issue in the appeal, the latter of which the appellant has responded to in full.
7. For the same reason, while the LPA did provide comments at paragraph 5 of its application for an award of costs response about the appearance/maintenance of the site, this is a matter that had already been considered as part of the main issue evidence. Therefore, while the LPA should not have used the costs application response process to make comments about the merits of appeal proposal, I do not find that any such unreasonable behaviour has resulted in wasted time and expense in the appeal process. Indeed, the appellants had already provided detailed reasoning as to why they considered that allowing the appeal development would be acceptable in terms of the upkeep of the land and the effect of the proposal on the character and appearance of the area.
8. Finally, the LPA's reliance on the delegated officer report as distinct from the preparation of a separate statement of case does not in itself amount to unreasonable behaviour. In fact, this approach is encouraged noting that the LPA can make final comments at the relevant stage of the appeal process. The appellants raise concern about the LPA stating that *'no additional information was provided by the appellant in relation to their case or in response to our Delegated Report'*. I am satisfied that the LPA has engaged in the appeal process. I am persuaded by the response from the LPA that the above comment did not mean what the appellants considered it meant. In other words, it is reasonable to interpret it as meaning that the appellants' statement of case contained *'no information which had not already been submitted and/or discussed within the application itself and covered within the Delegated report'*.

Conclusion

9. For the above reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, a full award of costs is not justified.

D Hartley

INSPECTOR