



Costs Decision

Site visit made on 21 February 2024

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2024

Costs application in relation to Appeal Ref APP/V2635/W/23/3322299 72 South Beach Road, Heacham, King's Lynn, Norfolk PE31 7BB

- 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 Nigel Marsh for a full award of costs against King's Lynn and West Norfolk Borough Council.
- The appeal was against the grant subject to conditions of planning permission for retrospective change of use of agricultural land to provide access, parking and turning to adjacent holiday accommodation granted planning permission under ref:12/00197/F.

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 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.
3. The applicant's claim is that the disputed condition does not meet the six tests of conditions set out in the National Planning Policy Framework (the Framework), and in spite of the advice of the planning officer to this effect, the Council's planning committee persisted in imposing the condition, which differed from that recommended by officers. The additional words 'access and' and 'only' have the effect of removing prior, lawful access to agricultural land within the applicant's ownership.
4. The Council in response states that the reason for the change in wording was to restrict the use of an adjacent unauthorised and unlawful campsite. It accepts that the wording could have been more precise, hence the proposed rewording of the condition which it put forward in its appeal statement, but it does not accept that its actions amount to unreasonable behaviour.
5. The PPG is clear that local planning authorities are at risk of an award of costs if they impose conditions that are not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus do not comply with the guidance in the Framework.¹
6. As set out in my main decision, the Council explicitly accepts that the wording of the existing condition is unreasonable, in that it serves to restrict previously lawful access to other land via the same entrance, despite there being no planning reason to do so. The evidence before me is not conclusive that

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

planning officers attempted to deter committee members from changing the wording of the originally proposed conditions. Rather, the minutes suggest officers assisted members in formulating the new wording.

7. On the evidence before me, the planning committee wrongly conflated the application before them with a separate enforcement matter relating to the use of land to the west. Regardless of whether this land was accessed via the same entrance, the restrictions imposed by the amended condition were not necessary to make the proposal as applied for acceptable in planning terms. The restriction was not relevant to the development to be permitted, and so failed this test. It was also unreasonable in that it went beyond even the scope of the restriction envisaged by the committee to preclude access to other land not subject to an enforcement investigation. The fact that the Council accepts such access is lawful also calls into question the enforceability of the condition.
8. For these reasons, the Council's actions in imposing the disputed condition amount to unreasonable behaviour. The Council's willingness to suggest an alternative wording at appeal is noted, but this does not negate the fact that were it not for the imposition of the condition in the first instance, the appeal would have been avoided. Instead, the Council's unreasonable behaviour has led to the applicant incurring the wasted expense of mounting the appeal.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

10. 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 King's Lynn and West Norfolk Borough Council shall pay to Mr Nigel Marsh, 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.
11. The applicant is now invited to submit to King's Lynn and West Norfolk Borough 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 Savage

INSPECTOR