
Costs Decision

Inquiry Held on 8 – 10 May, 21 – 24 May and 29 May 2024

Site visit made on 28 May 2024

by H Butcher BSc (Hons) MSc PG Dip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st June 2024

Costs application in relation to Appeal Ref: APP/P1045/W/24/3337912 Lot 2, Leys Farm, Wyaston Road, Ashbourne, Derbyshire

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Woodall Homes for a full award of costs against Derbyshire Dales District Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for a residential development of 87no.dwellinghouses together with associated landscaping, infrastructure and access.
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Decision

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

The submissions for Woodall Homes

2. Woodall Homes seek a full award of costs. This is based on a contention of substantive unreasonableness on the part of the Council. Broadly the appellant contends that Members' decision to set aside the comprehensive information available to them and the views of Council Planning Officers, and to refuse permission based on views not informed or substantiated by any alternative technical evidence, was unreasonable behaviour. The entirety of the appeal was therefore not necessary, and the costs incurred therein.
3. The appellant also alleges procedural unfairness for reasons which include the withdrawal of reasons for refusal, a lack of co-operation, and the introduction of new issues late in the proceedings which were previously agreed with the Council.
4. Accordingly, a full award of costs for the entire expense of the appeal is requested. Alternatively, a partial award is sought in respect of costs incurred by the appellant in providing evidence necessitated by the procedural failings of the Council which in their view could otherwise have been avoided.

The response by Derbyshire Dales District Council

5. The Council accept that a partial award of costs is justified in respect of the Council's withdrawal of reasons for refusal 4 and 6 relating to housing mix and Biodiversity Net Gain respectively. In all other respects the Council maintain that it was not unreasonable of them to refuse permission in respect of the remaining reasons for refusal.

6. The Council strongly dispute the appellant's procedural points as set out in their response.

Reasons

7. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
8. The withdrawal of any reason for refusal is the type of behaviour which may give rise to a procedural award against a local planning authority as set out in the PPG. In this case, the withdrawal of reasons 4 and 6 was done in good time, well in advance of the timetable for submission of proofs. Whilst the Council have conceded that costs are justified in this respect, in applying the relevant tests, I, however, find no unreasonable behaviour in this regard.
9. In respect of the withdrawal of reasons for refusal 1 (first part), 3 and 7 it was reasonable for the Council, in my view, to fully investigate their concerns in respect of these matters. By and large, once this was done, through the submission of further evidence, the Council was quick to review its case as part of sensible on-going case management. In respect of these three reasons for refusal the Council did produce evidence with objective analysis to substantiate their case in a timely manner, thereby exercising their duty to determine planning applications. Consequently, I find no unreasonable behaviour in this regard.
10. Furthermore, I find no evidence of a significant lack of co-operation on the part of the Council such that it amounted to unreasonable behaviour given evidence in respect of highways was received just prior to a Bank Holiday and the start of the Inquiry. In respect of the adjournment on Day 3, part way through Design evidence, whilst Mr Lally's points of concern in respect of viewpoints could have been made more explicit in his proof to aid both the appellant and Inspector's understanding of his case, this did not amount to unreasonable behaviour. Furthermore, as I noted in the Inquiry, matters of design and landscape often overlap, therefore, again, I find no unreasonable behaviour on the part of the Council in respect of their approach to design. Any other minor points of contradiction on the part of the Council's witnesses did not, in my view, reach the level of unreasonable behaviour.

Conclusion

11. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that an award of costs is not justified.

H Butcher

INSPECTOR