



Costs Decision

Site visit made on 27 February 2024

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2024

Costs application in relation to Appeal Ref: APP/G2435/W/23/3324219 The Warren, 6 Chapel Lane, Osgathorpe, Leicester, LE12 9SX

- 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 & Mrs Burrows for a full award of costs against North West Leicestershire District Council.
 - The appeal was against the refusal of planning permission for the erection of a 1.5-storey custom-build dwelling for later living along with a detached garage and associated works.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ("the 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. Paragraph 049 of the PPG gives examples of behaviour which may give rise to a substantive award of costs against a local planning authority. Among these there are four which, the applicants consider, are relevant in this case. These are "refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead", making "vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis", "not determining similar cases in a consistent manner", and "not reviewing their case promptly following the lodging of an appeal against refusal of planning permission [...] as part of sensible on-going case management"¹.

Conditions

4. The applicants state that they would have been willing to amend details of materials, fenestration or window profiles (in respect of the appearance of the proposed dwelling), and to provide further details (in respect of foul drainage) had the Council requested. They also consider that the third and fourth reasons for refusal, relating to character and appearance and to foul water drainage, could have been dealt with by conditions.
5. The applicants' agent e-mailed the Council on 26 January 2023 asking that the case officer "discuss any issues which would lead to a refusal with me prior to

¹ Reference ID: 16-049-20140306

determination so that we have the opportunity to resolve [them]". The case officer responded on 2 February that they would "not be coming back to seek to resolve issues which raise objection as the development still raises objection in principle [which] cannot be overcome and therefore, negotiating on other matters would serve no purpose and would only delay the determination of the application". The case officer also commented that they were "seeking clarification on a few matters relating to foul drainage", though this was evidently from the Council's Environmental Protection Team rather than from the applicants.

6. It is clear from the officer report which was provided to be that the Council's concerns about the character and appearance went further than the matters of detail highlighted by the applicants into rather more fundamental issues including the proposed building's form and proportions. In respect of foul drainage, the Council considers that "seeking to resolve this one issue would have still resulted in a refusal but would have given rise to additional costs being imposed on the appellant". The applicants in turn have pointed out that providing further information would "not have [led to] an additional cost to the appellant as these things would have been needed in any event to acquire the necessary licences and permits for the treatment plant", though this of course appears to be working on the assumption that planning permission would have been granted for the development at some point.
7. Based on the e-mail messages which have been provided to me in support of this claim, some aspects of the Council's communication may well justify the "high-handed" label the applicants have given it. However, while this is not as things should be, it is also not in itself evidence of unreasonable behaviour.
8. For reasons which are set out at length in my main decision, I broadly accepted the Council's analysis in respect of character and appearance, and this went beyond relatively minor matters which could be dealt with by conditions. I also agreed that, in the circumstances of this case which included potential harm to neighbours' living conditions (and notwithstanding that the applicants provided details of an appeal decision elsewhere in which an Inspector had reached a different conclusion) it would not be appropriate to grant permission with a condition requiring the provision of further information about the proposed approach to foul drainage treatment. Given these conclusions, I cannot find that the Council acted unreasonably in this regard.

Vague, generalised or inaccurate assertions

9. There are two elements to this part of the applicants' claim. The first is that the fourth (foul drainage) reason for refusal was "based entirely on a worst case scenario invented by the case officer", and that the Council's environmental health team had been "corralled into simply stating there was insufficient information". This can be dealt with quickly; for reasons set out in my main decision relating to potential ground conditions and the proximity of a neighbouring dwelling, I consider the Council's precautionary stance to have been well-founded. The Council's actions in this respect were not unreasonable.
10. The other element relates to the second reason for refusal, and the impact of the proposed development on nearby listed buildings. The applicants suggest that the Council's stance had been based only on a site visit carried out by a conservation officer more than six years earlier. For its part the Council notes that the case officer also visited the site on 15 December 2022 and took

photographs, though the applicants state that they are “not aware of a visit taking place at that time”, and also note that the relevant views towards the listed buildings would not be possible from publicly-accessible land.

11. For reasons which are set out in my main decision, I did not agree with the Council’s assessment of this issue. I found that the proposed development would not cause harm to the setting of the nearby listed buildings, not least because of the two new houses built on land next to the appeal site since the conservation officer last visited in 2016. That I reached a different conclusion on this matter is not in itself evidence of unreasonable behaviour; as the applicants acknowledge it is a question of planning judgement.
12. I have not been provided with copies of the photos taken by the case officer in December 2022, nor am I party to correspondence between the case officer and the conservation officer. It seems to me to be less than ideal that a planning application should be being refused on heritage grounds (among other reasons) without the conservation officer having visited more recently than six years previously, regardless of how familiar they may be with the wider village of Osgathorpe. In this light, and given the changed nature of the appeal site’s surroundings in the intervening period, I find the Council’s stance on this issue to have been somewhat vague and inaccurate. It may therefore be said to fall within the realm of unreasonable behaviour as set out in the PPG.

Consistency

13. The applicants’ claim on this matter is based on the Council having granted planning permission for self-build dwellings in locations outside settlements and therefore (in the development plan’s terms) in “the countryside”. They particularly drew my attention to a scheme in Newbold² where the Council determined that the benefits of providing a self-build dwelling would outweigh the harm arising from conflict with the relevant development plan policies, contrasting it with the appeal scheme in which it had reached the opposite view.
14. The applicants describe the Newbold development (and the other self-build schemes to which the Council’s officer report had referred) as “remarkably similar to the appeal proposal”. However, while I did not visit any of the other examples during my site visit, a quick glance at the map provided to me suggests that the nature of the sites is very different. The Newbold site is on a highway frontage, with what appear to be dwellings and their gardens on three sides; the appeal scheme, on the other hand, would represent an extension of built form beyond a settlement edge into open countryside. There are also differences in the availability of services and facilities within the two villages.
15. I was not provided with the same amount of detail in respect of other schemes granted planning permission, but the Council described differences either in the location of the proposed development, the availability of services nearby, or both. These differences indicate to me that the Council was justified in determining the planning applications differently according to the site-specific facts, including weighting relevant (positive or negative) factors differently. Unreasonable behaviour on the part of the Council has not been demonstrated.

² LPA Ref: 23/00776/OUT

Case management

16. The applicants' initial claim did not set out any matters specifically under this theme, though in their "final comments" it was said that the Council should have reviewed both its heritage and foul drainage reasons for refusal on appeal. For the reasons I have set out above, in particular that I found the information provided with the application and at appeal stage in respect of foul drainage to have been inadequate, I do not consider that the Council acted unreasonably on that matter.
17. The Council did not provide additional information on the heritage matter during the appeal, maintaining the original position set out in its officer report. I have already described the Council's reasoning on this matter as somewhat vague and inaccurate, and therefore its behaviour to have strayed into the unreasonable. However, I do not consider that it was so obviously misguided that it should have been instantly apparent, on the appeal being lodged, that it should alter its stance on the matter. To that extent therefore, the previous unreasonable behaviour on its part was not exacerbated by any shortcomings in its handling of the appeal.

Overall findings

18. In respect of the heritage matter only, I have found the Council's reasoning and arguments to have been vague and inaccurate. Notwithstanding whatever communication may have taken place between its case officer and conservation officer, its stance was not supported by the visual evidence which a thorough visit to all parts of the site would have provided. To this extent therefore, I find the Council's behaviour to have been unreasonable in the terms set out in the PPG.
19. In order to make an award of costs, I need to be satisfied that any unreasonable behaviour resulted in unnecessary or wasted expense. The applicants refer to having been left "with no option other than to pursue an unnecessary appeal at considerable cost". However, while the Council's actions in respect of the second reason for refusal may have amounted to unreasonable behaviour its actions in respect of the other three reasons, which were well-founded, did not. On this basis, it seems likely that the planning application would still have been refused, and the applicant would still have incurred the costs of appeal.

Conclusion

20. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

M Cryan

Inspector