



Costs Decision

Site visit made on 16 July 2024

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2024

Costs application in relation to Appeal Ref: APP/H4505/X/23/3330380 Former site of 21 Mill Road, Gateshead Quays, Gateshead NE8 3AD

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Jonathan Riley, Valorem Investment Partners Limited, for a full award of costs against Gateshead Council.
 - The appeal was against the refusal of a certificate of lawful use or development for lawful commencement of development pursuant to planning permission reference DC/19/00785/FUL.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance (PPG)¹ 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.
3. The appellant's case may be summarised as follows:
 - a) The Council took into account irrelevant considerations (namely water supply connection and land ownership issues) in deciding whether a material operation had occurred on the site.
 - b) It made unfounded assertions regarding the appellant hiring the first available contractor with excavating equipment to dig a trench.
 - c) It adopted an unreasonable position in refusing to discharge Condition 3 of the planning permission.
 - d) The Council should have granted the LDC application.
4. It is a matter of fact and degree as to whether a material operation can be said to have taken place, sufficient to begin a development. The Council explained that the proposed foundation type, relevant to the commencement work, would be at odds with the expectation that pile foundations would be needed for the building, and also that the access location for utility services to the site was uncertain. Whilst I considered, on the balance of probability, that the trench

¹ Reference ID: 16-030-20140306

constituted a material operation, the Council nevertheless explained its position, which I am not persuaded was unreasonable.

5. The Council referred to a land ownership constraint within its officer report. However, this was referred to within the 'Other Matters' section, where it was expressly stated that the issue did not directly concern the commencement of development.
6. The Council did question, because of the land ownership position, whether the appellant intended to fully develop the site. The appellant's intention in this regard is not germane to the question of whether a material operation has occurred. However, on balance, I am satisfied that this was set out as contextual background information, and that the Council's decision did not turn on this matter. Notably it was not recorded as a reason for the LDC application being refused.
7. I found the Council's accusation it is likely that 'the developer has appointed the first available contractor with excavating equipment ... to dig a trench...' to be a somewhat intemperate choice of words. However, again, the context to this was the explained doubt as to the true purpose of the trench, which did not go so far as to constitute unreasonable behaviour.
8. The question of whether Condition 3 should have been discharged by the Council, based on its merits, is beyond the scope of this appeal. I disagreed with the Council's position regarding whether Condition 3 was a condition precedent. However, it clearly explained and justified its stance in this regard, which to my mind came nowhere near the threshold for unreasonable behaviour. When also having regard to my main decision, I do not agree that the Council's decision to refuse the LDC application was unreasonable.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

R Merrett

INSPECTOR