



Costs Decision

Inquiry Held on 23-24 July 2024

Site visit made on 24 July 2024

by Peter Mark Sturgess BSc(Hons), MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th August 2024

Costs application in relation to Appeal Ref: APP/U2750/W/24/3341645 Land at Knox Lane, Harrogate, North Yorkshire, HG21 3DE (East 429757 North 457261)

- 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 Jomast for a full award of costs against North Yorkshire Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for full planning application for 53no residential dwellings with associated parking, public open space and landscaping.
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Decision

1. The application for a full award of costs is allowed, in terms set out below.

Preamble

2. The application for a full award of costs by the Applicant, the Council's response to that application and the final response by the Applicant were all received prior to the opening of the Inquiry. I asked at the Inquiry whether any party wanted to add to these written submissions and no party did. I shall therefore base my costs decision on the information submitted by the parties in writing prior to the Inquiry.
3. The Planning Practice Guidance (PPG) advises that parties to planning appeals are expected to meet their own costs. Costs can be awarded where, amongst other things, the following conditions apply: the party against whom a cost award is sought has behaved unreasonably and that unreasonable behaviour has caused the party applying for the costs to incur wasted or unnecessary expenditure in the appeal process.

The case for the Applicant

4. The Applicant has argued that the appeal should not have been necessary as the proposal was recommended for approval by the professional officers of the Council and the site is allocated for housing in the Local Plan. Furthermore, there are no reasonable grounds for overturning the professional officer's recommendation. Moreover, the determination of the proposal was delayed numerous times for reasons that would not have amounted to defensible reasons for refusal and that the Councillors did not consider the benefits of the

proposal when they made their decision. This has led them to waste expenditure on an appeal which should not have been necessary.

The case for the Council

5. The Council on the other hand has argued that it is not bound to accept the advice of its officers in making planning decisions. Councillors are free to make up their own minds and going against officer advice is not an example of unreasonable behaviour.
6. As is evidenced by the Committee Report, the Councillors did take the benefits of the proposal into account when they made their decision. Whilst the application was deferred a number of times with members making several requests for further information this was members taking their role seriously and ensuring that they dealt with the proposal thoroughly. The decision not to defend the appeal is not an example of unreasonable behaviour and it has cooperated with the applicant since it made the decision not to defend the appeal. Therefore, even if unreasonable behaviour leading to the applicant to incur wasted or unnecessary expenditure is found, only a partial award of costs should be made.

Reasons

7. The Council are entitled to take a decision contrary to the advice of its professional officers and that in itself is not grounds for an award of costs. However, in any appeal the Council must produce evidence to substantiate its decision. This is contained in the Written Ministerial Statement (WMS) referred to by the applicant where it refers to finding "*reasonable grounds for the Committee having overturned the officer's recommendation*".
8. It is clear to me that some of the deferrals of the decision on the application for more information were not necessary as they would not have formed a reason for refusal as they were either capable of being dealt with by condition (contaminated land), were not planning matters (the existence of a covenant) or were dealt with in either case law or the consultees response (the proximity of the electricity transmission lines to the houses). However, the PPG states that costs incurred during the application process cannot be claimed for. Despite this it is clear that the Council did not process the application in the most efficient manner and this in turn led to the decision to refuse the appeal proposal.
9. However, I do consider that the Council took into account the benefits of the scheme as is evidenced from the comprehensive officer's report which was before them when they made their decision on the application. They just did not agree, without any real reasonable grounds, with the recommendation.
10. The Council have chosen not to defend the appeal and offered no evidence at the Inquiry. This has meant that the applicant has had to present their case at the Inquiry through the submission of proofs of evidence, the attendance of Counsel and expert witnesses. Whilst this has reduced the sitting time of the Inquiry, thereby mitigating to a certain extent the expense incurred, it has meant that the Applicant has incurred costs in defending the appeal at the Inquiry which should not have been necessary, had the Council adopted this position prior to the decision to refuse the planning application.

11. The Council's decision not to defend the appeal at the Inquiry is tantamount to acknowledging that it had no case when it made the decision to refuse the planning application at Committee. The appeals system expects the parties to be able to justify their positions at Inquiry with evidence, even if that evidence is ultimately not strong enough to result in the appeal being decided in their favour. The Council did not do this, even though they were advised by their officers that the appeal proposal should be granted. Bearing in mind the WMS, the Council were not able to find reasonable grounds for having overturned the Officer's recommendation.
12. The Council's justification for changing its mind on the appeal proposal during the appeal process is that it took legal advice. That is not a credible position as legal advice would have been available to it prior to the planning application being considered by the Planning Committee. Moreover, the matters at issue in this appeal are not strictly speaking legal matters, they are planning matters upon which they had the advice of their Officer's when making the original decision. Furthermore, these matters did not change between the Committee's decision to refuse the planning application and the Council's decision not to defend the appeal.
13. I commend the Council for engaging with the appellant and the objectors during the appeal process to assist with the smooth running of the Inquiry. However, this still means that the Applicant has incurred wasted and unnecessary expenditure in both preparing for, attending the Inquiry and presenting evidence. Albeit this time and expenditure would have been reduced by not having to examine the Council's case or cross examine witnesses. Therefore, a full award of costs is justified.
14. I therefore find that the application succeeds, and I consider that the Council should pay the Applicant's costs for the wasted and unnecessary expenditure incurred in having to make this appeal and present its case at the Inquiry.

Costs Order

15. 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 North Yorkshire Council shall pay to the Jomast the full costs of the appeal proceedings described in the heading of this decision.
16. The Applicant is now invited to submit to the Council, to whom a copy of this letter has been sent, details of those costs with a view to reaching agreement as to the amount. In the event the parties cannot agree on the amount, a copy of the guidance notes on how to apply for a detailed assessment by the Senior Courts Costs Officer is enclosed.

P.M. Sturgess

INSPECTOR