



Costs Decision

Site visit made on 30 July 2024

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th August 2024

Costs application in relation to Appeal Ref. APP/U2750/D/24/3344873 Swan Mere, Caudle Hill, Fairburn, Knottingley WF11 9JQ

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr John Handforth for a full award of costs against North Yorkshire Council.
 - The appeal was made against the refusal of planning permission for raised access to front of dwelling for emergency escape.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Government's Planning Practice Guidance (the Guidance) advises that all parties in appeals are expected to behave reasonably to support an efficient and timely process and that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
3. The Council has not responded to the costs application, so the points raised have not been rebutted. Still, this application for costs has been considered on its merits in the light of the costs advice found within the Guidance, the appeal papers, the costs correspondence and all the relevant circumstances relating to the planning application and the appeal. The parties are also referred to my appeal decision.
4. The application for an award of costs is made on a substantive basis, relating to the planning merits of the appeal. The gist of the case, which is made with appropriate cross-references to the Guidance, is that there were no grounds for refusal of the application when judged in the context of the development plan and all material considerations, with the reasons for refusal being inaccurate and unsupported by objective analysis. So, it is said that the Council prevented development which should clearly have been permitted having regard to its accordance with the development plan, national policy and other material considerations.
5. I agree with the thrust of the applicant's argument and I believe the Council erred and behaved unreasonably in 3 key ways.
6. Firstly, there was an absence of any objective analysis about the alleged poor design of the raised access way in the first reason for refusal. Conversely, the Council's officer said its materials of construction were acceptable and that it was

set back from the road. I found that it did not amount to a poorly designed built form that is visually disruptive for any reason. It raised no material conflict with the aims of the relevant development plan policies. These were very clear findings. Any objective analysis of the matter of the impact of the raised access way on the character and appearance of the area could only logically produce one conclusion, along the lines advanced by the appellant and by myself in the appeal decision.

7. Secondly, it should have been clear to the Council that the fencing proposed 1.8m high above the raised deck level would have fully protected the privacy of the neighbours. Instead, a rather vague assertion in the second reason for refusal was offered that it "...would provide some mitigation to overlooking of the rear garden of The Old Garages...". The design of the fence was criticized, yet what it is that would lead the Council to refer to the fence's poor quality design is not made clear. If it would not be visible from public viewpoints, as the Council incorrectly alleged, it is not clear how visual harm would occur in any case. In removing the fence from the scheme, the proposal would not automatically lead to material overlooking of The Old Garages as suggested by the Council. The decking is only to be used very infrequently at times of flooding emergencies, when people using it would only be concerned about their safe passage along it and above the flood waters. As such, a material loss of privacy would never arise. This matter could have been appropriately covered by a planning condition as set out in my appeal decision.
8. Thirdly, risk of flooding is a major issue for Selby District. The Council had regard to this matter but may well have misdirected itself and attached limited weight to it by its reference to the decking terminating prior to the gated access where there is evidence of flooding. In fact, that decked walkway continues at a high level close to a separate gated pedestrian access slightly higher up the highway frontage that works as a safe access route during times of flood. Had the Council been alert to this, the "on balance" judgement it reached on the proposal might not have been tilted towards refusal and the development might not have been prevented.
9. The substantive flaws exhibited by the Council amounted to unreasonable behaviour when viewed in the round. They gave rise to the appeal being made and this resulted in unnecessary expense for Mr John Handforth. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, 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 North Yorkshire Council shall pay to Mr John Handforth, the full 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 North Yorkshire 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.

Andrew Dale

INSPECTOR