



Costs Decision

Site visit made on 23 September 2024

by H Marriott MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 November 2024

Costs application in relation to Appeal Ref: APP/J0540/W/24/3339977 Friarfield, London Road, Wothorpe, Peterborough PE9 3JS

- 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 Lawrence for a partial award of costs against Peterborough City Council.
 - The appeal was against the refusal to grant outline planning permission for the erection of 1 dwelling (all matters reserved except for access).
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (the Guidance) 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. Unreasonable behaviour on the part of a Council may include failure to produce evidence to substantiate each reason for refusal, vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis, lack of co-operation with the other party or withdrawal of any reason for refusal.
4. The costs application is made on the basis that the Council has acted unfairly and unreasonably in refusing planning permission in relation to its third and fourth reasons (reasons 3 and 4) for refusal and that engagement with the appellant would have avoided these reasons being included on the Council's decision. Refusing planning permission and not discussing these particular reasons with the appellant in advance does not on its own constitute unreasonable behaviour provided the reasons for doing so have been substantiated.
5. Reason 3 is considered to be precise, specific and relevant to the planning application which was submitted in outline form with all matters reserved apart from access. The reasons are also linked to the policies of the development plan and the National Planning Policy Framework (the Framework). These reasons are adequately expanded upon in the Council's Officer Report and engagement between the appellant and the Council post decision has resulted in the submission of amended plans comprising Drawing Numbers JG01 Rev C 'Visibility Splays' and JG02 Rev B 'Proposed Access and Driveway Improvements' with the appeal. These plans propose an amended passing bay

location in order to move it further away from the tree protection zone. An additional plan Drawing Number JG03 Rev A 'Tree Survey Overlay' has also been submitted showing the tree protections zones alongside further statement by East Midland Tree Surveys in relation to the widening of the access and the effect on trees.

6. The Council subsequently confirmed that that they would no longer be defending reason 3 in light of the amended and additional plans/information, and that this reason could be dealt with by conditions and /or at reserved matters stage. The submission of the amended and additional plans/information in this regard is considered necessary to address the reason 3. Therefore, I do not find that the Council has acted unfairly or unreasonably for imposing and subsequently withdrawing reason 3 in the absence of such information at the application stage.
7. However, reason 4 fails to acknowledge that matters relating to layout and design are reserved matters. The reasons given are not adequately expanded upon in the Council's Officer report which makes vague and generalised assertions with regards to separation distances without any substantive details available at this outline stage, particularly with regards to proposed window positions. Moreover, whilst further details regarding the position of windows in Friarfield have also been submitted with the appeal, I am not convinced that this additional information alone, justifies the withdrawal of reason 4 at this stage. Rather, it should have been clear to the Council, during an Officer site visit and from details submitted with the planning application, that this reason could be dealt with at reserved matters stage when issuing its decision.
8. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has occurred with regards to the Council's imposition of reason 4 and a partial award of costs in this particular respect is warranted. This does not remove the costs associated with the need to appeal the decision with regards to the other reasons for refusal, including the first and second reasons for refusal, which have been fully substantiated and informed the main issues and reasons for dismissing the appeal.

Conclusion

9. As a result, having considered the above, I conclude that unreasonable behaviour by the Council, as described in the Guidance, has been demonstrated in respect of the Council's fourth reason for refusal (reason 4). Therefore, unnecessary or wasted expense has been incurred by the applicant in that particular regard. Consequently, the application for a partial award of costs is approved in respect of reason 4 on the Council's decision notice only.

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 Peterborough City Council shall pay to Mr Lawrence, the partial costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the Council's fourth refusal reason (reason 4) relating to whether the proposed development would provide adequate living conditions for existing and future residents, with particular reference to

privacy; such costs to be assessed in the Senior Courts Costs Office if not agreed.

7. The applicant is now invited to submit to Peterborough City 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.

H Marriott

INSPECTOR