



Costs Decision

Site visit made on 14 November 2024

by D M Young JP BSc (Hons) MA MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 17 December 2024

Costs application in relation to Appeal Ref: APP/Z4718/W/24/3348803 Land adj. to 3 Boulder Gate, Marsden, Huddersfield, HD7 6LJ

- 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 Quine Developments Ltd for a full award of costs against Kirklees Metropolitan Council.
 - The appeal was against the refusal of planning permission for the erection of one detached dwelling and detached garage with associated landscaping development.
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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 (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. The application is based on both substantive and procedural grounds. In terms of the former, it is alleged that the Council failed to work with the applicant in a positive and proactive manner as required by the National Planning Policy Framework (the Framework) and made a number of false statements in its Officer's Report. The Applicant also alleges that the Council pre-determined the case by expressing its intention to refuse the application before the statutory consultation period had run its course contrary to the requirements of the Town and Country Planning (Development Management Procedure Order (GMPO)).
4. On substantive grounds, it is argued that the Council acted unreasonably in providing vague and generalised assertions about the proposals impact, not supported by any objective analysis. The Applicant also contends that the Council failed to properly apply the tilted balance as required by paragraph 11 of the Framework and has not determined similar cases in a consistent manner with regard to the 1987 permission.
5. In response, the Council argue that it is normal for Case Officer's to provide advice to applicants during the determination period or pre-application stage, but that does not mean the case has been pre-determined. The Council point out that the reasons for refusal in this instance did not rely on advice from specialist consultees and therefore the Case Officer was entitled to provide advice regarding the application's likelihood of success. It is pointed out that further discussions took place within the department after its email dated 28

March and so the views expressed therein were not final. Accordingly, the Council considers there was no breach of the GMPO.

6. In response to the substantive grounds, the Council argue that both reasons for refusal are clear and precise with the Officer's Report setting out the reasoned justification for both. While the Applicant may disagree with the Council on the planning merits, this does not warrant an award of costs.
7. Dealing with the procedural grounds first, I do not consider there was anything unusual in the level of engagement between the Applicant and Council. The email dated 28 March as well as the correspondence listed at paragraph 4.8 of the Council's Costs Response, demonstrates there was engagement between the parties. It seems to me that the level of engagement was commensurate to the circumstances of the proposed development. The fact that the Council took the position they did on the application, logically meant further discussions with the Applicant would have been futile.
8. The pre-determination point is equally ill-conceived. It is quite proper for non-binding advice to be offered by Council officers at various stages in the application process. Indeed, there is some contradiction between the Applicant's argument that there was insufficient engagement, while at the same time, criticising the Council for providing early feedback, something that would normally be welcomed by Applicants. The issue here appears to be with the nature of the advice rather than it being procedurally inappropriate or unusual in terms of its timing.
9. Putting that to one side, it is clear to me that the views expressed in the email dated 28 April did not constitute the final definitive decision as further discussions took place within the department after that date. The views expressed by the Officer concerned landscape and amenity effects and were therefore matters which would be unlikely to be influenced by comments received from statutory consultees or third parties. The email was thus an early and routine indication of the Officer's professional planning judgement. Accordingly, I can see nothing untoward or unusual in the Council's approach and certainly nothing that would bring it into conflict with the requirements of the GMPO.
10. While it is true that planning authorities are duty bound to work proactively with applicants, this was a case where there was no practical likelihood of the concerns being addressed through a reworking of the plans. I do not therefore consider it was unreasonable for the Council to issue "withdraw or refuse" advice to the Applicant.
11. In terms of inaccuracies in the Officer's Report, I consider these were neither deliberate nor determinative as to the outcome. As I saw when I conducted my site visit, the appeal site reads on the ground as "*garden land associated with No.3*" given no visible attempt has been made to fence it off. Therefore, while the appeal site may well be in separate ownership, that is not readily apparent when one visits the site and so the error was not unreasonable.
12. With regards to the substance of the Council's reasons for refusal, these involve matters of planning judgement concerning effects on the character and appearance of the area and living conditions of future occupiers. In such cases an award of costs will rarely be justified provided that realistic and specific evidence is provided about the consequences of the proposed development. In

this regard I am satisfied that the Council provided appropriate evidence in its reasons for refusal, Officer's Report and written appeal statement, which refer to matters such as plot coverage, topography, contribution of the site to the local area as well as relevant national and local policy and guidance.

13. The Officer's Report clearly addresses the matter of consistency with the 1987 permission, under the heading 'Principle of Development'. I consider the reasons provided were sufficient. The weight to be attributed to 1987 permission as a material consideration was a matter for the decision maker.
14. In terms of Policy LP2, I do not consider it was unreasonable for the Officer to find conflict with the policy; indeed, I came to the same view. Even in the alternative, this would have made no material difference to the outcome of the appeal given the conflict identified with other development plan policies.
15. As is clear from my decision, I have found in the Council's favour in terms of the merits of the case. I am therefore satisfied that sufficient justification was provided to support the reasons for refusal in all respects.

Conclusion

16. Unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

D M Young

INSPECTOR