
Costs Decision

Site visit made on 5 February 2025

by D R McCreery MA BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th March 2025

Costs application in relation to Appeal Ref: APP/U2750/W/24/3355082 Newlyn, Oulston Road, Easingwold, North Yorkshire, YO61 3PR

- 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 & Mrs M Hateley for a full award of costs against North Yorkshire Council.
 - The appeal was against the refusal of planning permission for change of use of land for the siting of 5 holiday lodges, improvements to existing access and associated infrastructure works.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, Paragraph 030 of the Planning Practice Guidance (PPG) 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. Unreasonable behaviour in the context of an application for an award of costs may be either procedural (i.e. relating to the process) or substantive (i.e. relating to the issues arising from the merits of the appeal), with non-exhaustive examples of each set out in the PPG¹.
3. The Applicants' claim is based on five grounds
 - a. Failure to substantiate reasons for refusal
 - b. Inconsistency in handling application
 - c. Failure to consider all supporting information
 - d. Preventing consistent development with the development plan
 - e. Refusing permission on matters capable of being dealt with by condition.
4. At the appeal stage it fell to the Council to substantiate each of their reasons for refusal. The level of substantiation necessary will vary from issue to issue and, as such, adequacy is a question of fact and degree.

¹ Paragraphs 047,049,052 and 053

5. The Council not providing a statement of case within the appeal timetable left the committee minutes and reasons for refusal as the main explanation of their concerns. The Officer's committee report provides insight into the principal planning issues but assists only partially on some matters as the Committee clearly did not agree with all the analysis. Outside the documentation, there is evidence that the Applicants were engaged in the planning application process and of communication between the parties. As such, the Applicants had a degree of insight into what the Council's concerns were. However, this does not negate the need for appropriate documentary evidence.
6. In relation to the second reason for refusal (living conditions) the absence of a more detailed explanation left uncertainty about the specific nature of the Council's concerns. The planning harm under consideration was clear and obvious enough, i.e. concerns about impact on neighbours. However, why the quality of the draft Site Management Plan was inadequate is unclear. The relevant reason for refusal indicates that the draft plan did not adequately demonstrate appropriate management of amenity impacts. There is little else to explain why the plan was deficient and the Council's position was not self evident. As the Planning Officer's committee report largely provides narrative about the position of the Environmental Health Officer, it does not assist.
7. In addition, the Site Management Plan was a draft. It was in the Council's gift to consider imposing a condition requiring the finer detail of the plan to be agreed. Indeed, Paragraph 56 (Framework) says that Councils should consider whether otherwise unacceptable development could be made acceptable using conditions. In addition, there is little to justify the Council's position, as set out in their reason for refusal, that a 'definitive site management plan' was a reasonable and proportionate requirement ahead of granting planning permission. I am not persuaded that the Council applied their minds adequately to these questions. If they had, there is reasonable evidence to indicate that a condition would have been appropriate.
8. For these reasons, on the balance of probabilities, unreasonable behaviour on the part of the Council has been demonstrated in respect of Grounds (a) and (e) in relation to the second reason for refusal (living conditions). That unreasonable behaviour directly led to wasted expense on the part of the Applicants, who were left arguing the merits of the second reason for refusal at appeal.
9. In terms of the first reason for refusal (character and appearance), the position is clearer. The committee minutes associate themselves with the comments made by the Planning Inspector in 2016. For the reasons explained in my appeal decision, the Council were within their rights to pay regard to it and the question of how much weight to attribute to it was for them in the first instance.
10. While the Committee did not agree with the Officer's committee report, it provides appropriate insight in terms of identifying the issues at play. The principal and controversial planning issues were clear. While further explanation from the Council would have assisted, on the balance of probabilities, the Applicants were not left in a position of directly incurring wasted expense at appeal as a result. Unreasonable behaviour has not been demonstrated in respect of Ground (a) in relation to the first reason for refusal (character and appearance).

11. It is an acknowledged and longstanding principle that a planning committee is not duty bound to follow the recommendation of officers. While the Council needed to substantiate each of their reasons for refusal, they did not need to specifically justify taking a different view to Officers. Nor did any proactive working between the Applicants and Officers tie the hands of the Committee in terms of allowing them to reach a view on the planning merits of the scheme.
12. Requesting and accepting further details following submission of the planning application was at the Council's discretion. Equally, it would have been open to the Council to make a decision based on the information originally submitted. Whether to provide the requested information was a matter for the Applicants. However, submission of it did not guarantee a positive outcome. This is particularly the case in respect of the additional information on site levels and design, where the judgement on the effects on the character and appearance of the area carries a level of subjectivity. Within this context, up until the point of final decision making, the Council were entitled to consider the planning issues afresh and even change their view. This does not point towards an inconsistency in decision making.
13. It is difficult to accept that the Council would go to the trouble of giving the Applicants an opportunity to submit additional information, a matter that was at their discretion, only to then not consider it. In relation to the committee minutes recording an absence of detail on the design of the lodges, the Council have explained that this related to the lack of information relating to final finishes. The difference of view between the parties about whether the Council was in possession of adequate information does not amount to a failure to consider all supporting information. The question of whether the information was adequate and how much weight to attribute to it was a matter for the Council in the first instance.
14. For the reasons set out above, and considering the detailed points put forward by both parties, the arguments in respect of Grounds (b) and (c) are matters more directly related to the handling of the planning application, rather than issues for the appeal costs regime. If the Applicants are unhappy they are able to engage the Council's complaints procedure, including seeking a view from the Monitoring Officer on procedural matters and committee standards. As a matter of appeal costs, on the balance of probabilities, I am not persuaded that unreasonable behaviour directly leading to wasted expense at the appeal stage has occurred in respect of Grounds (b) and (c).
15. Given my finding on the main appeal, unreasonable behaviour leading to wasted expense at the appeal stage has not occurred in respect of Ground (d).

Costs Order

16. 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, IT IS HEREBY ORDERED that North Yorkshire Council shall pay to Mr & Mrs M Hateley the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in defence of the Council's second reason for refusal (living conditions) as detailed in their decision notice reference ZB24/00145/FUL. Such costs to be assessed in the Senior Courts Costs Office if not agreed.

17. The Applicants are 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.

D R McCreery

INSPECTOR