



Costs Decision

Site visit made on 20 March 2025

by J Smith MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th April 2025

Costs application in relation to Appeal Ref: APP/R4408/W/24/3356383

Land to the South of 52 Tower Street, Barnsley S70 1QS

- 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 and Mrs Chris and Sue Barton for a full award of costs against Barnsley Metropolitan Borough Council.
- The appeal was against the refusal of the Council to grant planning permission for erection of one dwelling house, with 4 bedrooms, which is accessible and adaptable to the requirements of M4 Category 2, with single garage and associated driveways, landscaping, boundary walls and external steps.

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 PPG provides examples of unreasonable behaviour by local planning authorities. This includes procedural matters, such as providing information that is shown to be manifestly untrue or inaccurate, or deliberately concealing relevant evidence. It also includes substantive matters, such as preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, or failure to provide evidence to substantiate the reasons for refusal.
4. The application for costs relates to the alleged failure of the Council on several items which are listed by the applicants. These are that the Council did not have due regard to relevant sections of the National Planning Policy Framework (the Framework), did not consider the use of an appropriate planning condition and that the originally submitted Arboricultural Impact Assessment was ignored. A final matter is raised with regard to the behaviour by the Council in their feedback response through a pre-application assessment.
5. The applicants have alleged that the Council ignored Paragraph 139 (b) of the Framework in their decision. However, in my assessment of the case presented by the Council, I note that reference is made to Paragraph 139. This section of the report states that with regard to Paragraph 139, development that is not well designed should be refused. The Council subsequently refused the appeal on its design, stating that it would appear alien in the street scene. Paragraph 139 (b) specifically states that development of an innovative design must fit in with the overall form and layout of their surroundings. It does not excuse design which does not fit in with the character of its

surroundings on the basis that it is simply innovative. Therefore, I disagree with the assertion of the applicants that Paragraph 139 (b) of the Framework was ignored.

6. The applicants also suggest that the Council has acted in contrary to Paragraph 116 of the Framework (previously Paragraph 115). Specifically, it is argued that there is no impact on highway safety. However, this element of the Framework also requires the cumulative impacts on the road network to be taken into account. The appeal fails to provide an adequate arrangement due to enforceability reasons in imposing a planning condition. As such, this would create an issue with regard to access. I am not of the view that the Council has erred in its assessment of this matter.
7. Turning to the use of an appropriate planning condition, it is alleged that it has been unreasonable by the Council to not impose a planning condition requiring the private drive along Tower Street to be developed to an adoptable standard. Thus, removing the issue with regards to highway access. As deliberated in the main decision, a condition on this matter would not be enforceable. This is due to matters of ownership. Paragraph 57 of the Framework asserts that planning conditions must only be imposed where they meet a series of tests, including that it would be enforceable. The proposed highway improvement works would require the agreement of all the necessary landowners and should any of these parties refuse to agree, then the Council would be unable to enforce the condition. The appeal did not include any agreement with the necessary landowners.
8. As discussed in the main decision, the application plans were amended before the Council made their decision. The applicants suggest that the amended plans indicated the impact of the trees concerned. As such, they did not believe it was necessary to revise the Arboricultural Impact Assessment. Subsequently, this resulted in a reason for refusal. I acknowledge that in reading the amended plans it would be reasonable to assume that these trees would have been removed. However, it is the responsibility of the applicants to ensure that their submission is clear. This includes that its proposed plans and supporting documents are consistent with each other. This is not a failure of the Council and would not therefore present itself as unreasonable behaviour.
9. I now turn to the matter of the pre-application engagement and the response on this from the Council. In following the evidence, the Council did provide a response to the pre-application request. This did not include comments on the matter of highway access. The Council have rebutted this matter by stating that the Highway Department did not have the capacity to provide a detailed response. This is unfortunate, but I understand that resources must be allocated appropriately. This scheme is for one dwelling. It is not unreasonable for the Highways Department to prioritise their pre-application responses to schemes which require significant input, in addition to their usual workload.
10. To conclude, I am not persuaded that the local authority has acted unreasonably in the substantive and procedural matters raised above. As such, unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, an award of costs on this issue is not justified.
11. For these reasons and taking into account all other matters raised, the application for costs is refused.

J Smith

INSPECTOR