Planning Inspectorate

Costs Decision

Site visit made on 5 February 2025

by N Kempton BAHons PGDip MA IHBC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2025

Costs application in relation to Appeal Ref: APP/E2001/W/24/3349681
Land West of Moor Farm, Cliffe Road, North Newbald, East Riding of Yorkshire YO43 4SR

- 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 Ms Lucinda Hemingbrough for a full award of costs against East Riding of Yorkshire Council.
- The appeal was against the refusal to discharge condition 10 of planning permission Ref 20/01149/PLF, which required the provision of inter-visible passing places within highway land along its length and resurfacing from the junction of Moor Farm to the site entrance.

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 heart of the applicant's claim is that the Council was unreasonable in its decision-making: failing to discharge its duty to determine the application; failing to provide an explanation as to why the submitted details did not comply with the requirement of condition 10; and, failing to act proactively in obtaining a consultation response from the Highway Development Management section. The applicant considers that this amounts to unreasonable conduct, which has caused them to incur costs to seek to justify and explain the matter at appeal.

4. The PPG sets out that a local planning authority is at risk of an award of costs if it behaves unreasonably with respect to the substance of the matter under appeal, for example, by preventing development which should clearly be permitted or by not determining similar cases in a consistent manner.

5. The Council sought legal Counsel and concluded that a lawful start had not been made on the development pursuant to the planning permission prior to the expiration of the planning permission, and that the application could not, therefore, be approved. Case law has established that there is nothing to prevent a decision being made on an application for the discharge of a condition if the permission expires during the decision-making process, so long as the application has been validly made before the expiry date of the permission.

6. The application for the approval of the details pursuant to condition 10 was submitted to the Council on the 17th January 2024. The planning permission expired of the 10th February 2024. As such, I am satisfied that the application was validly made prior to the expiration of the planning permission.

7. Whilst the Council erred in law, its delegated report, decision notice and indeed, appeal statement consistently and clearly set out the factors that the Council considered and explained the reasons for their conclusion. This does not amount to an unreasonable refusal.

8. I am satisfied that the Council followed correct procedure in consulting stakeholders. A Council can lawfully determine a planning application after the 21-day consultation period has lapsed and in order to meet the statutory 8 weeks determination period, even if consultee responses are outstanding.

9. This case relates to a complicated set of circumstances. Whilst the Council may have conflated other issues beyond the narrow scope of the appeal, the Council have provided a plausible explanation as to how they reached their decision. Notwithstanding that I found favour with the appellant in determining the appeal, I am satisfied that the Council considered all of the relevant matters.

10. The Council has not therefore behaved unreasonably with respect to the substance of the matter under appeal.

Conclusion

11. Therefore, it has not been demonstrated that unreasonable behaviour resulting in unnecessary or wasted expense has occurred and as such, an award of costs is not warranted.

N Kempton

INSPECTOR