
Costs Decision

Site visit made on 24 July 2017

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 July 2017

Costs application in relation to Appeal Ref: APP/M2325/W/17/3173299 The Homestead, Ribby Road, Kirkham, Lancashire PR4 2BE

- 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 Justin Coyne for a full award of costs against Fylde Borough Council.
 - The appeal was against the refusal of outline planning permission for a 4 Bedroom 2 storey Detached house.
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Decision

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

Reasons

2. 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 process¹.
3. In setting out their case, the applicant has referred me to the examples of unreasonable behaviour listed in the Guidance². The applicant considers that the Council has behaved unreasonably, by making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; refusing planning permission on a planning ground capable of being dealt with by conditions; 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; and failing to produce evidence to substantiate each reason for refusal on appeal. I have regard to the Council's response in writing and the applicant's comments.
4. Notably, the applicant does not refer to, in their claim, matters relating to the proposal's effect on the character of the area. In terms of this issue, despite elected members taking a different stance to their officers, they are not bound to accept their officer's recommendation. Added to this, the effect of the proposed development on the character of the area does require judgement, irrespective of the Council's current inability to demonstrate a five-year supply of deliverable housing sites. I did not find the Council's evidence in this regard to be vague, generalised or inaccurate, nor could their concerns be dealt with

¹ Planning Practice Guidance, Paragraph: 030 Reference ID: 16-030-20140306

² Planning Practice Guidance, Paragraph: 049 Reference ID: 16-049-20140306

by way of planning conditions. It was not clear that development should have been permitted in this context.

5. Turning to highway matters. Central to the applicant's case is the consultation response of Lancashire County Council (LCC) who are the Highway Authority. The response by LCC was particularly clear, in that they did not consider the principle of the proposed access to be an issue. They did, nonetheless express concerns with the potential for vehicles and pedestrians to come into contact with one another. Despite this, LCC considered that this could be resolved by a low fence or landscaping. Although no such amendment was submitted before the Council determined the planning application, despite the Council's request³, LCC did explain it could be dealt with by way of a suitable planning condition.
6. I have had regard to the Council's point that such details go to the heart of the proposed access arrangements. However landscaping matters were reserved for future consideration, even if the applicant did with their appeal submissions include an illustrative plan which showed how a low boundary fence could provide a physical barrier between the proposed access and the school access. The Guidance is clear that access details should normally form part of the development if it is applied for. The exception to this is where the applicant has made it clear that the details have been submitted for illustration purposes only⁴. However, landscaping was a matter for future consideration.
7. Elected members are entitled to make a judgement on a development proposal before them and they are not bound by their officer's recommendations. They must, however, be able to reasonably justify their stance having regard to the development plan, unless material considerations indicate otherwise. In this context, I was not satisfied that the Council in not following LCC's or their own officers advice, provided cogent and compelling reasons to explain why they departed from the view of a statutory consultee⁵, even if the school access is well used.
8. The Guidance⁶ explains that Councils are at risk of an award of costs if refuse planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead. Given the views of the case officer, LCC and the planning conditions suggested in the Council's Statement of Case, I am unclear as to why the Council did not address their concerns through a planning condition as I have concluded.
9. Insofar as the living conditions of neighbouring residents are concerned, I understand the Council's point that their Extending Your Home Supplementary Planning Document (SPD) is intended to assess the effect of extensions to existing dwellings on the living conditions of neighbouring occupants. But, despite not referring to it in the officer's report or the reason for refusal, the Council conceded that it is a useful guide. I agreed with that view. So, while it does not provide a definitive benchmark for new dwellings to be assessed against, it was nonetheless material. In this regard, the applicant showed that the appeal scheme would meet or exceed the SPD. While the effects of new development are often harder to judge, given the scheme's adherence to the

³ Rebuttal to application for an award of costs, Appendix A

⁴ Planning Practice Guidance, Paragraph: 005 Reference ID: 21a-005-20140306

⁵ Shadwell Estates Ltd v Breckland DC and Another [2013] EWHC 12 (Admin), at [72]

⁶ Planning Practice Guidance, Paragraph: 049 Reference ID: 16-049-20140306

SPD, it ought to have been a useful indication. Even though the Council recognised the established landscaping on the shared boundary with dwellings on Cherry Close, I was not persuaded that a further subjective judgement was necessary given the scale of the dwelling was before the Council. In any event, the landscaping would only aid the privacy of existing and future occupants and similarly maintain the existing outlook from 8 to 10 Cherry Close.

10. Nevertheless, due to the housing supply position, a judgement was ultimately required as explained in paragraph 14 of the Framework. Thus, I do not consider the applicant's claim for a full award of their costs relating to the appeal process is justified, as I am not satisfied that the development should clearly have been permitted. However, I do consider the Council behaved unreasonably, in terms of the proposal's effect on highway safety and the living conditions of neighbouring occupants, by making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; refusing planning permission on a planning ground capable of being dealt with by conditions; and failing to produce evidence to substantiate each reason for refusal on appeal. Hence, I consider that a partial award of costs, limited to highway and living conditions matters, is reasonable.

Costs Order

11. 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 Fylde Borough Council shall pay to Mr Justin Coyne, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to matters relating to highway and living conditions; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Fylde Borough 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. In the event that the parties cannot agree on the amount, a link is provided in the covering letter to guidance on how to apply for a detailed assessment by the Senior Courts Costs Office.

Andrew McGlone

INSPECTOR