



Costs Decision

Site visit made on 20 June 2024

by **M J Francis BA (Hons) MA MSc MCIfA**

an Inspector appointed by the Secretary of State

Decision date: 23 July 2024

Costs application in relation to Appeal Ref: APP/N1350/W/24/3342243 Land to rear of Hazelfield Cottage, Elstob Lane, Great Stainton TS21 1HP

- 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 Turner of Hazelfield Lodges Ltd for a full award of costs against Darlington Borough Council.
 - The appeal was against the refusal of planning permission for revised application for (retrospective) erection of 3no. holiday chalets with proposed secondary access, car parking and associated landscaping with part conversion of existing outbuilding into kitchen/seating and reception area.
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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. Unreasonable behaviour in the context of an application for an award of costs may be either procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal.
3. The applicants have set out that based on the submitted technical highways information, details of an appeal decision at Hurworth Springs and applications at Carr House, the Council should have approved the application. They also refer to the initial advice received from the Council, alleged bias against the scheme, as well as false and misleading statements and evidence being ignored. Consultations with Natural England regarding nutrient neutrality have also been referred to.
4. The applicants have documented that they received incorrect advice regarding the need for planning permission when they wanted to develop the site. Screenshots of phone calls and a copy of a message to the Council have been submitted. However, the Council has no evidence of any advice given, and their policy is that only written advice is provided. I appreciate that the applicants found it frustrating trying to get the correct information at the time of the covid pandemic, and whilst time was wasted, the evidence does not suggest any deliberate intent by the Council to mislead.

5. Whilst the applicants do not agree that MfS2¹ should have been used to assess the site, the Council has set out in the committee report why the DRMB² guidance was used instead, including the reason for refusal. Although the committee minutes do not refer to the additional information provided by the applicants, the Council has stated that this was sent to members. Whilst the parties disagree on matters of conduct at the committee meeting, these are, however, issues between the parties. Furthermore, I have refused the appeal based on the evidence that was submitted, including national guidance.
6. The applicants contend that the Council ignored new speed surveys, lower traffic volumes, including from data at Great Stainton, and dispute the Council's consideration of highway safety at Hurworth Springs. Whilst the Council may have had a different opinion on the data, there is no substantive evidence to suggest that the Council ignored surveys. Notwithstanding this, I have assessed all the submitted evidence before me.
7. In terms of nutrient neutrality, the evidence suggests that Natural England objected to the Council's conclusions on the appropriate assessment for this site, requesting an alternative mitigation strategy. Whilst I have limited information as to how long this took to be resolved, an email from Natural England asked for woodland planting as mitigation, not the Council. This led to a later 'no objection' from Natural England, which was, I understand, verbally reported to the planning committee.
8. The Council did comment that the required visibility splays would not be achievable without acquiring third party land. Whilst this has resulted in a neighbouring owner increasing the cost of the land, the reference as such is commonly used when visibility splays are being assessed. This as such cannot be construed as unreasonable behaviour. Furthermore, references to the existing access, which is not part of this proposal, and visits by enforcement, are matters between the main parties and are not relevant to the appeal.
9. The applicants assert that the proposal has not been assessed fairly. Whilst I appreciate that they do not agree with the Council's decision, I am satisfied that the conclusions were properly reached overall. Planning permission should not have been granted and an appeal was therefore inevitable. The Council found that the proposal was contrary to the development plan which they substantiated with a stated reason for refusal.

Conclusion

10. For the reasons set out above, I conclude that unreasonable behaviour, resulting in unnecessary or wasted expense as described in the PPG, has not been demonstrated. Consequently, the application for an award of costs is refused.

M J Francis

INSPECTOR

¹ Manual for Streets 2.

² Design Manual for Roads and Bridges