



Costs Decision

Site visit made on 22 January 2018

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

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

Decision date: 13 February 2018

Costs application in relation to Appeal Ref: APP/H0738/W/17/3187827 Land North of Thorpe Thewles, Durham Road, Thorpe Thewles TS21 3JN

- 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 Simon Studholme and Sarah Hirst for a full award of costs against Stockton-on-Tees Borough Council.
 - The appeal was against the refusal of outline planning permission for residential development of up to 40 dwellings.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, costs may only 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 Planning Policy Guidance¹ (PPG) states that local planning authorities are at risk of costs being awarded against them if they behave unreasonably with respect to the substance of the matter under appeal and cites examples of such types of behaviour.
4. Although Council officers recommended that the planning application be approved, elected members are not duty bound to follow such advice and this was not in itself unreasonable.
5. The applicants consider that the Council failed to produce evidence to substantiate each reason for refusal on appeal or made vague, generalised or inaccurate assertions about the proposal's impact, which were unsupported by any objective analysis. I found that the Council provided very little evidence to support their view that the increase in size of the village would harm its character. Their statement relied on the quantitative increase in dwellings within the village as a result of the development rather than expanding on the actual effects they considered would arise. They did not demonstrate what harm would occur. The Council made no reference to what the significance of such a proportionate increase would be or otherwise put it into a meaningful context including any development plan policy or guidance.
6. Furthermore, although the reason for refusal referred to a harmful effect on supporting infrastructure they neither explained what particular infrastructure

¹ Paragraphs: 046 and 049, Reference ID: 16-046-20140306 and 16-049-20140306.

- would be affected nor what those harmful effects would be. The result was that the reason for refusal relating to character was not substantiated or supported by objective analysis and assertions about the proposal's impact were vague and generalised. In these circumstances the Council acted unreasonably.
7. The applicants have also referred to the Council's decision to grant outline planning permission for up to 24 dwellings at Thorpe Beck Farm in the village which they consider shows that the Council have not determined similar cases in a consistent manner.
 8. Based on the information before me, the officer's conclusions about the accessibility and sustainability of Thorpe Thewlis for housing development were similar in both that and the appeal case. It is not clear why a different approach was taken with the appeal case in this respect and the Council's approach to this aspect was not consistent. Whilst there were material differences between the two schemes, in particular the numbers of dwellings proposed, the scale of development itself has little bearing on the existing available alternatives to private car journeys.
 9. The Council's statement does not seek to differentiate any material dissimilarities there may have been between the two schemes in respect of the suitability of the village for housing development with reference to the availability of alternatives to private vehicle use. Nor did it highlight any other material changes which may have occurred between the granting of planning permission for the Thorpe Beck Farm scheme and the consideration of the appeal scheme. The applicants could have reasonably expected that the Council would have taken a consistent approach in this regard. In respect of finding that the appeal site would be an unsustainable location for housing the Council acted unreasonably.
 10. The consideration of the effect of a sizeable development on the character of an existing settlement is a subjective one. Similarly, given the particular circumstances of alternatives to private vehicle travel future occupiers would be faced with, opportunities within the village were not of a nature where consideration of the matter was necessarily clear cut. However, in the context of the decision at Thorpe Beck Farm and particularly the Council's findings in that case regarding the suitability of the location for housing development, the Council did effectively prevent development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
 11. The refusal of planning permission therefore constitutes unreasonable behaviour as does the Council's behaviour in the above mentioned aspects in relation to the appeal, contrary to the guidance in the PPG, and the applicants have been faced with the unnecessary expense of lodging the appeal. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has been demonstrated and an award of costs is justified.

Costs Order

12. 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

Stockton-on-Tees Borough Council shall pay to Simon Studholme and Sarah Hirst, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. The applicants are now invited to submit to Stockton-on-Tees 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.

Geoff Underwood

INSPECTOR