
Costs Decision

Site visit made on 9 February 2016

by Philip Major BA(Hons) DipTP MRTPI

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

Decision date: 8 March 2016

Costs application in relation to Appeal Ref: APP/H0738/W/15/3136587 Land south of Cayton Drive, Thornaby, TS17 0HD.

- 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 Mandale Construction North Ltd for a full award of costs against Stockton-on-Tees Borough Council.
 - The appeal was against the refusal of planning permission described as an *"outline planning application (all matters reserved) for residential development of up to 45 dwellings."*
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Decision

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

Reasons

2. Planning Practice Guidance advises that, 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 expense in the appeal process.
 3. In this case the Council acknowledges that the appeal site is located within the defined settlement limits of Thornaby and outside the Green Wedge which formerly applied to this area. It also acknowledges that the site is not within, but adjacent to, the Tees Heritage Park. The reason for refusing planning permission was based on the impact of the proposal on visual amenity and landscape character.
 4. The Appellant has produced significant evidence dealing with these matters. The Council, on the other hand, has produced little at appeal stage to justify its decision. The appeal statement of the Council points out that the decision of the Committee was based on 'opinion rather than fact' which might to a degree be taken to mean that it was a judgement about the impact on visual amenity and character. It is therefore necessary for the Council to explain its judgement.
 5. This judgement by the Council is supplemented by the suggestion that the proposed development would be more noticeable from the adjacent Tees Heritage Park, and would impinge on its character and the visual amenity associated with it. The value ascribed to the Park and the openness of the site next to it are said to outweigh the benefits of the scheme.
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6. However, the Appellant alleges that the Council has failed to identify any specific adverse impacts and that the reason for refusal is based on a vague and generalised assertion.
7. Planning Practice Guidance indicates that a local planning authority may be liable for an award of costs against it if it relies on "*vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.*" Given the degree of evidence available from the Appellant and the thorough consideration by its own officers, all of which concluded that the proposal should be permitted, it is incumbent upon the Council to ensure that any refusal is justified. At appeal this means providing clear evidence supporting the reason for refusal.
8. Although the Council members are not bound to accept the advice of their officers, where they depart from it there must be justifiable planning reasons to do so. The paucity of evidence that there was justification to do so in this case leads me to the conclusion that the refusal of planning permission has not been justified at appeal. The opinions of the Members have not been backed up by sound planning reasoning. In short, when refusing planning permission the Council has relied on vague and generalised assertions which have not been justified by objective analysis leading to informed decision taking.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

10. 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 Mandale Construction North Ltd, the costs of the appeal proceedings; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal described in the heading of this decision.
11. The applicant is 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.

Philip Major

INSPECTOR