



Costs Decision

Site visit made on 11 September 2018

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

an Inspector appointed by the Secretary of State

Decision date: 23 October 2018

Costs application in relation to Appeal Ref: APP/H0738/W/18/3194426 Land associated with Hunter's Rest, Urlay Nook Road, Eaglescliffe

- 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 Site Plan UK for a full award of costs against Stockton-on-Tees Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for outline planning permission for the erection of residential development, associated infrastructure including access road and public open space.
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Decision

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

Preliminary Matter

2. Since the application for costs was made the National Planning Policy Framework has been revised. The main parties have been given an opportunity to comment on the revisions and I have taken any responses where they may be relevant to this application into account in reaching my decision.

Reasons

3. 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.
4. The Planning Policy Guidance (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. The applicants consider that the Council prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, which is cited in the PPG as an example of such unreasonable behaviour. In particular they point to delays in making a recommendation on the application to the Council's Planning Committee and subsequent deferrals once it was reported.
5. Consideration of the application at the 27 September 2017 Committee meeting was deferred to enable further highways matters to be investigated which were notified to the applicants only a few days before the Committee Meeting date. This appears to be very short notice considering that the application had been

- submitted in March. However, the Council clearly explained the reasons for requiring more information.
6. The particular matters related to highways mitigation in relation to the A66 Elton Interchange, the provision of car parking in Yarm and the provision of a bus service. It is of note that these mitigation measures are addressed as planning obligations in the applicant's Unilateral Undertaking and are not matters of dispute in the appeal. Furthermore, the additional work was necessary to establish the effects of the development in those respects and what mitigation would be required to make it acceptable.
 7. It took some time for the matter to be resolved and the applicant reports delays by the Council's Highways officers in responding as well as the Council's position changing with regards to the need or otherwise for the Council's West Stockton traffic model to have been completed in order to assess effects.
 8. Whilst a considerable period had elapsed between the September Committee date and the 17 January Committee meeting, it is evident that negotiations were ongoing into December which led to the Council being in a position to report the application to the Planning Committee. The evidence does not clearly show that such delays were, as the applicant purports, a deliberate attempt to delay the application. Although a swifter and clearer dialogue may have been helpful, the correspondence presented does not lead me to consider that the Council acted unreasonably in this respect as it gave the applicant a proper explanation why it failed to determine the application within the time limits up until the January Committee.
 9. However, consideration of the application was deferred at that January meeting. The reason for doing so was to seek additional information and work in relation to surface and foul water drainage and details of further traffic modelling work. Although the appeal had been made by that time, it subsequently transpired at a February Committee meeting, as shown by the Officer's report and the Planning Committee's resolution, that such additional information was not necessary to enable the Council to take a view on the application.
 10. The minutes of the 17 January meeting make it clear that the Committee Report's detailing of Northumbrian Water's comments and those of the Highways, Transport and Design Manager were considered. Members of the Planning Committee are not duty bound to accept Officers' recommendations and entitled to request further information should they see fit. Nevertheless, the Committee Report made it clear that the advice was that a planning condition could address the lack of detail provided about surface water drainage and that the residual cumulative impacts of the proposed development on the road network were not considered to be severe.
 11. The minutes show that there was an explanation that officers did not, at that time, have a 'fully rebased' traffic model but that in light of work that the applicants had carried out that the applicants' testing was sufficient for the application.
 12. No new information was presented when the Council subsequently took a view that the development was acceptable without additional drainage work and traffic modelling. Therefore it is reasonable to conclude that the Council could have taken a view on the development at the January meeting. The deferral

and request for additional information caused delay and at this point the applicants made their appeal.

13. As such there is no reasonable justification to back up the reasons why the determination of the application was delayed at and after the January Committee meeting. Had the Council taken the view it did at its February meeting earlier, which the evidence indicates it could have done, there is a strong probability that the entire appeal could have been avoided. The Council acted unreasonably in this respect and the applicants were faced with the unnecessary expense of making the appeal.
14. These are circumstances where the PPG points out that if an appeal in a non-determination case is allowed, the Council may be at risk of an award of costs. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

Costs Order

15. 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 Site Plan UK, 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.
16. 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.

Geoff Underwood

INSPECTOR