



Costs Decision

Site visit made on 10 January 2019

by D Guiver LLB (Hons) Solicitor

an Inspector appointed by the Secretary of State

Decision date: 1 March 2019

Costs application in relation to Appeal Ref: APP/F4410/W/18/3213666 Land off Marshland Road/Bloomhill Court, Moorends, Doncaster DN8 4PF

- 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 D Noble Limited for a full award of costs against Doncaster Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for construction of 23 no. 2, 3 and 4-bed dwellings and associated car parking.
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Decision

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

Reasons

2. The applicant submits that the Council has acted unreasonably in that it failed to substantiate the reasons for refusal and that the applicant was misled during the application process on the likelihood that the scheme would be approved. The applicant also submits that a narrative element of the decision notice in relation to officers working with the applicant was unjustified. Refusal was on the grounds that the access at the proposed development would not provide for 'a safe place for current residents to live' and would have an unacceptable negative impact on the amenity of neighbouring occupiers.
3. 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. The PPG makes it clear that a local planning authority is at risk of an award of costs if it behaves unreasonably with respect to the substance of the matter under appeal by failing to produce evidence to substantiate each reason for refusal and introducing vague, generalised or inaccurate assertions about a proposal's impact that were unsupported by any objective analysis.

Safe Place for Current Residents

4. The reference to a 'safe place' is clearly a reference to the impact of the proposed development on highway safety and Members were entitled to take account of the concerns of residents about the increase in traffic. However, the Council describes highway safety concerns as a 'potential harm' arising from additional vehicle trips but provides no compelling evidence to show any actual risk and substantiate the reason for refusal.

5. Such a statement could be made of any proposal and in the absence of evidence of an actual risk to highway safety the reason for refusal was hypothetical and therefore unreasonable. Accordingly, the applicant incurred the unnecessary and wasted costs of an appeal to address this matter.

Negative Impact on the Amenity of Neighbouring Occupiers

6. The Council describes the area from which access would be taken as 'a quiet cul de sac' and identifies the impact of additional vehicular and pedestrian traffic as a potential source of harm the amenity of existing residents. It is reasonable to assume that additional dwellings would result in an increase in vehicle journeys. However, other than stating that the proposal could result in three times as many journeys, the Council does not offer any cogent evidence to show that the increase would result in unacceptable harm.
7. The majority of additional journeys would presumably occur at peak times when the existing occupiers are also undertaking the majority of their journeys and the likely result would still be a very small number. Moreover, the main sources of noise from doors closing and vehicles starting would be likely to occur on the appeal site and would cause no more disturbance to the occupiers of the cul de sac than similar noises elsewhere in Bloomhill Court.
8. In the absence of any compelling evidence to show a likely, rather than potential, negative impact on the living conditions of neighbouring occupiers, this reason for refusal was also hypothetical and therefore unreasonable. Accordingly, the applicant incurred the unnecessary and wasted costs of an appeal to address this matter.

Misleading Indications

9. There was clearly a significant period between submission of the application and the Council's final determination. It is common ground that during this time the parties were involved in extensive discussions and several modifications were made to the scheme. Each modification by the applicant was clearly designed to address issues that officers had raised and eventually the matter was referred to committee with a recommendation for approval.
10. The applicant accepts that Members are not bound to accept the recommendations of their officers and therefore cannot have been misled into thinking that the application was bound to be approved. Notwithstanding my conclusions above on the veracity of the reasons given, refusal *per se* would not on its own be unreasonable behaviour just because officers supported a proposal. I therefore conclude that the applicant was not misled.
11. The narrative paragraph in the decision notice accurately records the fact that extensive discussions occurred between the applicant and the Council. While the paragraph might be unnecessary and the word 'despite' at the beginning could be considered slightly self-serving, the words are factually accurate and do not introduce any unsustainable reason for refusal. I therefore conclude that the statement is not unjustified.

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

Doncaster Metropolitan Borough Council shall pay to D Noble Limited the costs of the appeal proceedings described in the heading of this decision, those costs being limited to the costs incurred in addressing the highway safety implications and impact of the access on the living conditions of neighbouring occupiers, such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. The applicant is now invited to submit to Doncaster Metropolitan 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.

D Guiver

INSPECTOR