



Costs Decision

Site visit made on 24 February 2020

by **S R G Baird BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30th June 2020

Costs application in relation to Appeal Ref: APP/M2372/W/19/3243411 Land adjoining Moorthorpe Cottage, Park Road, Darwen, Lancashire BB3 2LQ

- 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 Ms G Lomax for a full award of costs against Blackburn with Darwen Borough Council.
 - The appeal was against the refusal of outline planning permission for the erection of 9 dwellings with detached garages.
-

Decision

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

Reasons

2. 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.
3. The Council acknowledges that, due to the prolonged absence of the case officer through illness, it failed to provide a pre-application response. Whilst one has sympathy with the individual officer, the Council provides no explanation as to why the case was not or could not be reassigned to another case officer. In these circumstances, I find that the Council acted unreasonably. I fully understand the appellant's frustration in not receiving the service for which she had paid a not insubstantial sum. However, given the Planning Committee did not accept the officer's recommendation that planning permission should be granted, the submission of a planning appeal could not be avoided.
4. Both applicants and objectors are permitted to present a case to the Planning Committee. For both this involved video presentations. The protocol is that the applicant presents first followed by those objecting. In the interests of fairness, it is highly unusual that the applicant was not given the opportunity to respond to the objectors' submissions. However, as that the Council appears to have followed its current protocols, I find that the Council did not act unreasonably. Moreover, without a verbatim transcript of the Members' discussion following the presentations, it is impossible for me to determine whether the objectors' presentation resulted in undue influence.
5. PPG advises that a Council is at risk of an award of costs if it behaves unreasonably through, amongst other things, failing to produce evidence to substantiate each reason for refusal on appeal. The nub of the issue in this

case relates to the scale of the development having regard to Local Plan (LP) Policy 28. A key part of the appellant's evidence on appeal was that residential development of a substantially larger scale was permitted on a site, Ellerslie House, that is allocated under LP Policy 28.

6. It is a basic tenet of the planning system that similar proposals are treated consistently. There is nothing in the Council's Statement of Case to address the appellant's fundamental point regarding a similar development and no explanation as to why 2 sites subject to the same policy designation were treated differently. Accordingly, I consider that in failing to produce evidence to substantiate the reason for refusal on appeal, the Council has acted unreasonably resulting in the appellant incurring unnecessary expense or wasted expense and that a full award of costs is justified.

Costs Order

7. 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 Blackburn with Darwen Borough Council shall pay to Ms G Lomax, 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. The applicant is now invited to submit to Blackburn with Darwen 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.

George Baird

Inspector