
Costs Decision

Site visit made on 22 November 2016

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

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

Decision date: 19th December 2016

Costs application in relation to Appeal Ref: APP/G2625/W/16/3154508 20 Cambridge Street, Norwich, Norfolk, NR2 2BB

- 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 Mr Peter Southgate U2 Homes Ltd for a full award of costs against Norwich City Council.
 - The appeal was against the refusal of planning permission for the erection of a three bedroom, two-storey dwelling with garage.
-

Decision

1. The application for an award of costs is refused.

Reasons

1. Planning Practice Guidance (PPG) 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.
 2. The applicant contends that the Council has acted unreasonably in that Council Officers recommended that planning permission be granted, but that Council Members took a different course of action and failed to substantiate their objections on the grounds of harm to the Conservation Area and to living conditions.
 3. I have noted the recommendations of the Council's Officers. However, the decision is one which is a matter of judgement. The Council Members in this case were entitled not to take the professional advice of Officers so long as a case could be made for the contrary view.
 4. The reasons for refusal were comprehensive and set out in sufficient detail the reasons for the harm they identified. It will be seen from my decision that I agree with Council Members and that there were sufficient grounds for refusing planning permission in respect of harm to the character or appearance of the Heigham Grove Conservation Area and in respect of living conditions. It follows that I am satisfied that the Council has shown that it was able to substantiate their reasons for refusal.
 5. I also do not consider that the Council's decision was based upon vague, generalised and inaccurate assertions without objective evidence. While the Council did not directly request any further technical information, it would have not been possible for the Officer to predict the outcome of the Committee. Impacts at No 5 Trinity Street were well articulated within the Officer report
-

- and again Members were entitled to give this matter more weight in the decision making process. Moreover, the reason for refusal relates to outlook as well as loss of daylight. Therefore while the daylight/sunlight assessment submitted as part of the appeal provided further information on the latter, it did not address concerns in respect of any overbearing impact or enclosure. There is therefore no evidence to suggest that, had the study been requested and submitted as part of the application, Members would have taken a different approach and I find that there is no unreasonable behaviour in this respect.
6. The applicant also considers that the proposal should clearly have been permitted as the benefits clearly outweigh the Council's perceived adverse impacts, which have not been demonstrated nor are they significant. In respect of the requisite 'balancing act' due to a lack of 5-year housing land supply, under limb 2 of the 4th bullet point of paragraph 14 of the National Planning Policy Framework (the Framework) this indicates that permission should be granted unless specific policies in the Framework indicate that development should be restricted. Footnote 9 gives examples of specific policies that indicate development should be restricted, including designated heritage assets.
 7. The Council clearly identified that the level of harm to the Conservation Area was less than substantial and that the benefits of delivering an additional dwelling were not considered to outweigh this. The Council's documentation clearly recognises "benefits" and I have no evidence before me that their decision was based on a single benefit of housing supply or that other benefits were ignored.
 8. I am therefore satisfied that the Council correctly applied the paragraph 134 test, and assessed the benefits of the proposals at that point. Given that specific heritage policies did indicate that development should be restricted, I am satisfied that the Council correctly deployed the balancing exercise and overall, in exercising their planning judgement, it is clear to me that Members gave due account to national planning policy in respect of the harm they identified. In their appeal statement, the Council did seek to undertake a broader review as required under limb 1 of the 4th bullet point of paragraph 14, however given the policy restriction on development, it was not necessary to do this. Again I find that there is no unreasonable behaviour in this respect, and as such there can be no question that the applicant was put to unnecessary or wasted expense.

Conclusion

9. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated.

C Searson
INSPECTOR