
Costs Decision

Site visit made on 6 December 2016

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

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

Decision date: 3 January 2017

Costs application in relation to Appeal Ref: APP/E2530/W/16/3158121 Land to the rear of Gladstone Terrace, Grantham, Lincolnshire NG31 8BW

- 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 Invicta Rentals Limited for a full award of costs against South Kesteven District Council.
 - The appeal was against the refusal of planning permission for the erection of 24 apartments in 2 blocks with no on-site parking other than emergency vehicles and drop off point.
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Decision

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

Reasons

2. 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. There are three claims to assess. Firstly, whether development was prevented or delayed that clearly should have been permitted, having regard to the development plan, national policy and any other material considerations. Secondly, whether the Council produced evidence to substantiate its reason for refusal on appeal contrary to officer recommendation, or instead relied on vague, generalised or inaccurate assertions about a proposal's impact unsupported by any objective analysis. Lastly, whether members in deciding on behalf of the Council to refuse permission took the decision impartially, fairly and on merit in an open and transparent manner and were not unduly influenced by the extent of local opposition.
3. Dealing with the first claim, officers were supportive of the application and considered that it complied with the development plan. However, it was the role of the Planning Committee to determine the application on behalf of the Council. Having considered all the evidence, it was entitled to reach a different conclusion to the recommendation of its officers.
4. The proposed development would be three storeys tall with a third storey in the roofspace. Reference has been made to permission that had been granted in the past for semi-detached and terraced housing on a larger version of the appeal site¹. The scheme had the same arrangement of storeys and a similar separation distance to Gladstone Terrace as the appeal proposal. However, that scheme had wider gaps separating the buildings from the sides of the site

¹ Ref S09/2454

- as well as a gap between the proposed houses. It is therefore materially different to the appeal proposal which would occupy almost the full width of the appeal site with no gap separating the two blocks. As a result, this earlier scheme was not similar enough to the appeal scheme to indicate that permission should necessarily have been granted.
5. For these reasons, the action of the Planning Committee in deciding to refuse planning permission, contrary to the recommendation of its officers and in light of this earlier permission, in itself was not unreasonable.
 6. With regard to the second claim, the Council's reason for refusal explained that the combination of the proximity of the proposed development, together with its scale and mass, led it to conclude that it would result in an overbearing outlook. The Council was entitled in its appeal statement to introduce reference to paragraphs of the Framework to expand upon its reason for refusal.
 7. The Council correctly identified proximity, scale and mass as factors that influence the effect of a building on the surrounding outlook. In the absence of adopted standards regarding separation distances, it is a matter of planning judgement as to whether development of a given height and width, and thus scale and mass, a particular distance away from existing development would result in an overbearing outlook.
 8. In my reasoning in the most recent previous appeal decision, I identified that the buildings would be tall and that the roofs would be bulky. Given the width and proximity of the blocks, I concluded that there would be an overbearing outlook. It is a matter of judgement as to whether the reduction in the bulk of the roofs and the height of the buildings in the current appeal, whilst leaving the width of the buildings and separation distances unchanged, would prevent an overbearing outlook. For the reasons, I gave in the appeal decision I found that it would. However, through its reason for refusal and appeal statement the Council presented respectable evidence that substantiated its refusal, contrary to the recommendation of its officers.
 9. Turning to the final claim, there is significant local opposition to the proposal. Reasons include the effect of the proposed development on privacy and outlook experienced by occupiers of Gladstone Terrace. Members correctly focussed on this issue and any new concerns, rather than considering matters that had already been addressed.
 10. The adjournment of a committee meeting to allow the application to be discussed in private before reconvening and voting to refuse permission did not demonstrate a failure of openness. Often where decisions are finely balanced adjournments allow necessary deliberation to take place. The committee having considered the report, visited the site and heard those who spoke at the meeting considered the application and voted to refuse permission giving their reason why. They therefore behaved in an open and transparent manner. The allegation that they were unduly influenced by the extent of local opposition and did not behave impartially, fairly or assess the application on merit is not substantiated by the evidence. I therefore find that it has not been shown that the committee behaved unreasonably.

11. Taking all these matters into account, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated. An award of costs is therefore not justified.

Ian Radcliffe

Inspector