
Costs Decision

Site visit made on 30 January 2017

by Alison Partington BA (Hons) MA MRTPI

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

Decision date: 10th February 2017

Costs application in relation to Appeal Ref: APP/P2365/W/16/3162936 153 Aughton Street, Ormskirk, Lancashire L39 3LG

- 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 Neil MacFarlane for a full award of costs against West Lancashire Borough Council.
 - The appeal was against the refusal of planning permission for alterations and extensions to 'small student HMO' bungalow to form two storey 'larger HMO' with 12 beds.
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Decision

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

Reasons

2. The *Planning Practice Guide* (PPG) advises that parties will normally be expected to meet their own costs in relation to appeals, and that costs may only be awarded against a party who has acted unreasonably, and thereby caused the party applying for costs to incur unnecessary, or wasted, expense in the appeal process.
 3. The applicant claims that by failing to produce evidence to substantiate the reason for refusal the Council has acted unreasonably. It is highlighted that the Committee of the Council determining the application decided not to accept the recommendations of its Officers to grant permission, and that the Council's appeal statement relies on vague and generalised assertions, which are unsupported by objective analysis. As a consequence, it is argued that members both prevented and delayed development which should clearly have been permitted, having regard to the development plan, national policy and any other material considerations. The PPG indicates that, in such circumstances, costs may be awarded against an authority.
 4. Although there is only one reason for refusal it indicates that the proposal would represent the over-development of the site which relates to its impact on the character and appearance of the area, and that it would be detrimental to the living conditions of nearby residents.
 5. As detailed in my appeal decision I have found that the proposal would be acceptable both in terms of its effect on the character and appearance of the area, and the living conditions of the occupiers of neighbouring properties. However, I recognise that the effect of a development on these issues is primarily a matter of judgement. I consider that the Council in its appeal statement substantiated its reasoning for why it considers the development
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- would have a detrimental impact on the living conditions of neighbouring occupiers. For example paragraphs 4.9 and 4.11 set out how they consider the scale and height of the proposal would have a detrimental impact on the light and sunlight of the adjacent properties.
6. I note that the Council's statement also addresses matters of outlook and privacy which are not specifically mentioned in the reason for refusal. However, as representations from the occupiers of surrounding properties raised specific concerns regarding the impact of the proposal on both the outlook and privacy of nearby residents, the appellant's evidence on these additional matters do not represent wasted or unnecessary expense.
 7. In respect of living conditions I therefore consider that the Council has substantiated the reasons why it considers the proposal would be detrimental. In my opinion, in matters such as this, where issues are finely balanced, it was not unreasonable for the local planning authority to give different weight to the material considerations, and the views of local people, than its Officers had in reaching their recommendation for approval, or in advice given at pre-application stage.
 8. Nevertheless, the Council's statement does not provide any evidence as to why they consider the proposal would represent an over-development of the site. In fact, it confirms that the proposal would be acceptable in terms of its impact on the character and appearance of the area, and that in this regard, it would comply with the relevant development plan policy. As such, it has not provided any evidence to substantiate this part of the reason for refusal. Therefore in this matter, I consider that the Council has acted unreasonably.
 9. It is stated that when the Committee first considered the application, they deferred it in order to allow the applicant to address concerns they had regarding the design of the scheme, and the number of students that would be accommodated, but when the scheme was considered again it was refused on different matters that the appellant had not had chance to address. However, the design of the scheme, and the its size, which is an inherent factor in the number of occupiers, both effect the matters of character and appearance and living conditions, which were given in the reason for refusal. Moreover, the Council have indicated that the appellant chose not to amend the proposal at this stage in any event.
 10. Overall, with regard to living conditions, although in this case I have found against the Council, it does not mean that the Council has acted unreasonably in coming to a different conclusion. However, with regard to character and appearance I find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and thus a partial award of costs is justified.

Costs Order

11. 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 West Lancashire Borough Council shall pay to Mr Neil MacFarlane, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with matters relating to character and appearance; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to West Lancashire 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.

Alison Partington

INSPECTOR