

Costs Decision

by **Daniel Hartley BA Hons MTP MBA MRTPI**

Decision date: 08 March 2017

**Costs application in relation to Appeal Ref: APP/B3410/W/16/3165004
61 Tower Road, Burton Upon Trent DE15 0NH**

- 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 Steve Cassie for a full award of costs against East Staffordshire Borough Council.
 - The appeal was against the refusal of planning permission for the erection of 3 No, 2 storey, 5 bedroom houses and a detached double garage serving the existing property.
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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 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.
 3. The appellant has commented that there were detailed pre-application discussions with the local planning authority prior to the submission of the planning application, and that all initial concerns raised were adequately addressed in such a submission. Furthermore, the appellant does not consider that the Council has substantiated its reasons for refusal.
 4. The Planning Committee were entitled to go against the officer recommendation which was one of approval of planning permission. This in itself does not amount to unreasonable behaviour and it is generally accepted that pre-application advice is given on a without prejudice basis. Whilst I have found that the proposal would be acceptable in terms of its impact upon the living conditions of neighbouring residential properties (subject to the imposition of planning conditions), this does to some extent involve subjective planning judgment. I am satisfied that in this regard, the Council has substantiated its concerns about the effects of the proposed development.
 5. Notwithstanding the above, the Council has not provided reasonably robust and objective evidence to demonstrate why the proposed and resultant garden areas would be inadequate, or why, particularly in the context of existing back land development immediately to the east of the appeal site, the proposal would lead to an unacceptable intensification of development in the area, and hence why material harm would be caused to the character and appearance of
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the area. It is not the case that it is good enough to simply say that a proposal would lead to an unacceptable intensification or that garden areas would be inadequate. Indeed the PPG states that "*vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis*" amounts to the type of unreasonable behaviour that may give rise to a substantive award against the local planning authority. In respect of these matters, I consider that the Council has acted unreasonably and that the appellant has been put to unnecessary and wasted time and expense in pursuing the appeal.

Conclusion

6. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in part. Therefore, the application for an award of costs is partially allowed.

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 East Staffordshire Borough Council shall pay to Mr Steve Cassie, the costs of the appeal proceedings limited to those costs incurred in respect of preparing for and responding to matters relating to the character and appearance / intensification of the area and garden sizes, such costs to be assessed in the Senior Courts Costs Centre if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
8. Mr Steve Cassie is now invited to submit to East Staffordshire 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Daniel Hartley

INSPECTOR