
Costs Decision

Site visit made on 29 March 2017

by S J Lee BA(Hons) MA MRTPI

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

Decision date: 27th April 2017

Costs application in relation to Appeal Ref: APP/X3025/W/16/3165353 Former Redlands Christian Care Home, Rock Hill Gardens, Mansfield NG18 2JP

- 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 G Beech, Hamilton Hargreaves Limited for a full award of costs against Mansfield District Council.
 - The appeal was against the refusal of planning permission for the change of use and external alterations to provide house in multiple occupation.
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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 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 PPG indicates that local planning authorities are at risk of an award being made against them if they prevented or delayed development which should clearly have been permitted having regard to its accordance with the development plan, national policy and other material considerations, fail to substantiate each reason for refusal on appeal or if vague, generalised or inaccurate assertions about a proposal's impact are made without the support of objective analysis or if permissions were refused on a planning ground capable of being dealt with by conditions.
 4. The applicant's main concerns relate to the fact Members chose not to follow officer recommendations and, as a result, have not provided a substantive case to justify their three reasons for refusal and that the second reason for refusal could have been addressed by condition. Members are entitled not to accept the professional advice of Officers providing that a planning case can be made for the contrary view.
 5. In relation to the first reason for refusal, the applicant has argued that the Council have been unreasonable in referring to saved Policy H11 of the Mansfield District Local Plan (1998)(LP) insofar as this deals with the conversions of dwellings, rather than residential institutions. While the supporting text to the policy discusses the conversion of dwelling houses, the policy itself refers to the more generic term of 'housing'. The existing use of
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the building is a form of residential development and thus I am satisfied that the policy has some relevance to the appeal. I do not consider it unreasonable for the Council to have referred to this policy in their decision.

6. However, even if the LP were considered silent on the matter of conversion of a care home to a house in multiple occupation (HMO) then the provisions of the National Planning Policy Framework (the Framework) would still have applied. The concerns raised by the Council under their first reason for refusal are common planning matters that are addressed in the Framework's core planning principles¹. In the context of both local and national policy, there is nothing inherently unreasonable in the Council seeking to ensure a good standard of amenity or that a development does not harm the character of an area. It is reasonable to assume that the Council would have come to the same conclusion irrespective of Policy H11 and thus the appeal would have taken place in any event. As such, there has been no wasted expense as a result of reference to this policy.
7. Irrespective of the policy context, the applicant has suggested the Council failed to properly consider the nature of the existing use in determining whether it would integrate into the area or have an unacceptable impact on local character and amenity. While the applicant may disagree with the Council's evidence and arguments on this matter, I am satisfied that the Members were provided with sufficient evidence on which to base their decision. Moreover, while I have not accepted the Council's arguments on character or living conditions, the evidence provided addressed and sought to substantiate the first reason for refusal. The areas of concern are essentially matters of planning judgement and it was not unreasonable for the Council to consider the development could have had a different effect on the area than the existing use. The fact the applicant considered the differences between uses to be minimal does not alter that conclusion.
8. In terms of the second reason for refusal, the applicant has argued that the decision notice is unclear as it refers to the provision of a pavement 'to' the adopted road and not 'within' the adopted road. From the evidence provided, it is clear the applicant was fully aware of the nature of the concerns regarding where the pavement was expected to be provided. The inaccurate reference in the decision notice is unfortunate, but does not amount to unreasonable behaviour in my view. Furthermore, while the applicant has sought to clarify the issue in their evidence, this represents a small part of the evidence provided and would not have involved significant extra work to produce.
9. The applicant has also argued that concerns for pedestrian safety could have been adequately addressed by condition. The Council did not consider that such a condition could be discharged without there being harm to trees in the grass verge opposite the site. This, in turn, would result in harm to the character and appearance of the area. The applicant has argued that the verge is part of the adopted highway and thus the responsibility of the HA. This means that the trees could be removed without the Council's authority. Additionally, they consider it unreasonable that reference was made to Policy M16 if the concern related to the effect on character and appearance, as this policy only addresses transport matters.

¹ See paragraph 17 of the Framework.

10. It is clear from the evidence that the Council's overriding concern with the implementation of the pavement is that it may lead to the loss of trees. I have seen nothing which suggests the Council had been provided with a scheme showing the implementation of a pavement without trees being removed. Whether or not the trees are important to the appearance of the area is a matter of judgement and it is not unreasonable for the Council to have concerns that the condition could not be discharged without causing harm. Whilst it has been suggested the trees could be removed at any time by the HA to provide a pavement, there was no suggestion in the evidence that there is any intent or plan to do so. Therefore, it is reasonable to assume the pavement would only be implemented if related to a development.
11. As such, I see nothing unreasonable in the Council being concerned that the direct result of the development would be the removal of trees and that this would cause harm. Not imposing the condition would protect the trees, but would result in what the Council considered to be an unacceptable risk to pedestrian safety. The reference to Policy MI6 is therefore reasonable. Whilst I do not share the Council's concerns over pedestrian safety, I see no sign of unreasonable behaviour with regard to this issue.
12. The second part of this reason for refusal relates to the intensification of the traffic and the resulting impact on the highway network. The Council has provided no substantive evidence in relation to this concern, either in terms of an explanation of the harm or any justification for their conclusions. Unlike their concerns over character and living conditions, the alleged increase in traffic and the effect on the efficient operation of the transport network is quantifiable and less a matter of judgement. No attempt has been made to estimate the increase in traffic or explain how this would affect traffic either on Rock Hill itself or nearby roads. In this regard, I find that the Council has not substantiated its reason for refusal and has relied on vague and generalised assertions. As such, they have acted unreasonably.
13. While the appellant's rebuttal evidence for this is not significant, it should not have been necessary to address this issue and thus some unnecessary expense as part of the appeal process will have been incurred.
14. The third reason for refusal relates to the fear of crime. Again, it is argued that the Council have failed to provide substantive evidence for this argument. The Council have relied on generalised comments from the Policy Architectural Liaison Officer (ALO) that houses in multiple occupation can, in certain circumstances, lead to an increase in noise, disturbance and anti-social behaviour. I recognise that the ALO gave some weight to the intended management of the site by the applicant, but the issue of whether tenancy could be realistically controlled was addressed by the officer report. This also stated that the use was acceptable in principle and that other controls outside the planning system were in place to deal with anti-social behaviour and crime.
15. In substantiating their case, the Council have not gone beyond what I consider to be vague and generalised assertions which are not backed up with anything which demonstrates that the proposed land use would lead to any realistic increase in crime or fear of crime. The comments from the Police do not, in my view, amount to an objection to the development, nor did they Council appear to consider the beneficial effects of the development in terms of addressing suspicious behaviour associated with the vacant building. In this regard, I also

find that the Council's behaviour was unreasonable and that the appellant was put to unnecessary expense in the appeal process.

Conclusion

16. For the above reasons, I find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

17. 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 Mansfield District Council shall pay to Mr G Beech, Hamilton Hargreaves Limited the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in arguing against the Council's view that the proposal would have a detrimental effect on the surrounding highway network and where the quality of life for residents would be undermined through the fear of crime; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is now invited to submit to Mansfield District 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.

S J Lee

INSPECTOR