

Costs Decision

Site visit made on 3 May 2017

by John Dowsett MA DipURP DipUD MRTPI

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

Decision date: 8 June 2017

Costs application in relation to Appeal Ref: APP/V2004/W/17/3168348 69 Glencoe Street, Kingston upon Hull HU3 6HR

- 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 Mark Girdham of Myton Gate Property Group for a full award of costs against Kingston-upon-Hull City Council.
 - The appeal was against the refusal of planning permission for a change of use from 3no. flats into a house in multiple occupation (8 bedroom) and construction of dormer window to rear.
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Decision

1. The application for an award of costs is allowed in part, 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 appellant submits that the Council has acted unreasonably in that it has gone against the advice of its officers and has failed to substantiate the reason for refusal.
 4. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
 5. The single reason for refusal has two elements to it, the first relating to the living conditions of the future residents of the development and the second to the living conditions of the occupiers of nearby residential properties.
 6. In respect of the first element, whilst the Council made reference to policies in the development plan and in supplementary planning guidance, these policies do not contain requirements in respect of the number of bathrooms which should be provided, and it is solely in this regard that the Council argued that the scheme was deficient. The Council's assertion that the proposal would not comply with the policies was therefore inaccurate.
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7. Turning to the second element, the Council's evidence contained a reasoned argument as to why it considered that the proposal would have an adverse impact on the occupiers of nearby residential properties. Reference was also made to policies in the development plan. Whilst, ultimately, I did not accept this argument, the evidence was not so scant that the reasoning behind this aspect of the reason for refusal was not clear.
8. On the evidence that was before me, planning permission should not have been withheld on the grounds that the proposal would not provide suitable living conditions for the future occupiers of the development. This constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG and the appellant has been faced with unnecessary expense in preparing and addressing this aspect of the appeal.
9. The appellant has sought a full award of costs, however, the reason for refusal was not wholly unsubstantiated by the evidence and, consequently, I cannot make a full award. Nevertheless, in respect of the first element of the reason for refusal the Council has behaved unreasonably.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that 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 Kingston-upon-Hull City Council shall pay to Mr Mark Girdham of Myton Gate Property Group, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing and presenting the case in respect of whether the proposed development would provide suitable living conditions for the future occupiers of the development; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Kingston-upon-Hull City 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.

John Dowsett

INSPECTOR