
Costs Decision

Site visit made on 12 June 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 30 June 2017

Costs application in relation to Appeal Ref: APP/P3040/W/17/3172000 Charnley, Thelda Avenue, Keyworth NG12 5HU

- 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 Peter Atkin for a full award of costs against Rushcliffe Borough Council.
 - The appeal was against the refusal of planning permission for erection of garden building to form granny annexe.
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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 Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 3. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes substantive matters such as preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate a reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. Unreasonable behaviour also includes refusing planning permission on a planning ground capable of being dealt with by conditions. The applicant's costs application relates to each of these substantive matters listed as examples. The application has also made specific reference to the Council's approach when determining the application following pre-application discussions.
 4. The applicant engaged in pre-application discussions with the Council. However, such advice is generally offered without prejudice to the outcome of any subsequent application, as are any suggested amendments by the officer. The applicant has raised additional concerns regarding procedures that the Council followed in determining the application. However, based on the evidence before me, I cannot conclude that the Council behaved unreasonably or unfairly in that respect or that existing procedures were not followed in terms of referral of the application to Planning Committee, when Members considered the application following such a referral or during the meeting itself.
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The planning application was determined by the Members of the Planning Committee and the Planning Committee are not obliged to follow the recommendation of their officers provided that a contrary decision made is reasonable.

5. The two reasons for refusal set out in the decision notice are complete, precise, specific and relevant to the application. The reasons for refusal clearly identify what the Council considers to be harmful and refers to conflict with the policies of the Rushcliffe Local Plan Part 1: Core Strategy (CS), the Rushcliffe Borough Non-Statutory Replacement Local Plan (NS-LP) and the National Planning Policy Framework (the Framework). Furthermore, the Council's evidence includes a statement of case which seeks to substantiate the reasons for refusal, given that the decision taken at the Council's Planning Committee was different to officer recommendations.
6. It will be seen from my decision that I take a different view to the Council's Planning Committee and find no harm or conflict with policies of the CS, NS-LP and the Framework in terms of the effect on the living conditions of occupiers of 17 Debdale Lane which relates to the first reason for refusal. However, such a conclusion reflects a matter of judgement on a subjective issue taking account of the core planning principle of the Framework which seeks a good standard of amenity for all existing and future occupiers of land and buildings, where there is no policy in the CS and NS-LP before me that provides specific guidance on appropriate separation distances between properties or in terms of effects on rear gardens. Consequently, despite the outcome of the appeal, I cannot conclude that the Members of the Planning Committee behaved unreasonably in reaching a different view to my own, even though contrary to the officer's report and recommendation. As the perceived harm identified related to the location and scale of the building, it could not have been reasonably addressed by condition. I cannot, therefore, conclude that the Council has behaved unreasonably with respect to preventing or delaying development, or that its actions when imposing the first reason for refusal caused the applicant to incur unnecessary or wasted expense in the appeal process as a result.
7. Notwithstanding the above, a second reason for refusal was included in the decision notice which related to matters of character and appearance with particular regard to an Ash tree in the neighbouring garden. The Members of the Planning Committee in making their decision considered that the application did not adequately demonstrate that drainage required to serve the annexe building could be installed without unduly affecting the health and wellbeing of the tree. It will be seen from my decision that I consider that the tree makes a positive contribution to the character and appearance of the area. However, based upon the evidence before me and my observations of the site and its surroundings including the tree and its relationship to the proposed building, the development would not have an adverse effect on its health and wellbeing. In that respect, it is clear that the depth of the existing root system of the tree and the design of the building would allow the method and location of any excavations, including for drainage and services, to be suitably controlled by condition to mitigate any risk rather than refusing permission on those grounds.
8. Having regard to the above, the Members of the Planning Committee in making their decision and imposing the second reason for refusal failed to properly

take into account the site specific circumstances above in making an inaccurate assertion about the proposal's impact which is unsupported by any objective analysis. In that respect, although Policy GP2 of NS-LP is a material consideration in so far as it seeks retention of trees, there is no reasoned justification why the Members of the Planning Committee disregarded the advice of their own landscape and design officer and the officer report that excavations and the risk to the tree could be suitably managed by condition. Consequently, the Council behaved unreasonably in refusing planning permission on a planning ground capable of being dealt with by conditions. As a result, the applicant had to defend the second reason for refusal, which involved extra work as part of the appeal submission and final comments, which constitutes wasted expense in the appeal process.

Conclusion

9. I have found that the Council behaved unreasonably in refusing planning permission on a planning ground within the second reason for refusal relating to the health and wellbeing of a neighbouring tree that would be capable of being dealt with by condition.
10. I, therefore, conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting the Council's second reason for refusal, 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 Rushcliffe Borough Council shall pay to Mr Peter Atkin, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the Council's second reason for refusal, which concerned alleged conflict with Policy GP2 of NS-LP; such costs are to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to the Council, to which a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Gareth Wildgoose

INSPECTOR