Costs Decision

Site visit made on 14 June 2017

by B Bowker Mplan MRTPI

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

Decision date: 14 July 2017

Costs application in relation to Appeal Ref: APP/W2465/W/17/3169615
Oxford Grange Phase 2, 36 Grange Lane, Leicester LE2 7EH

- 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 Oxford Grange Limited for a full award of costs against Leicester City Council.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission described as two storey extension to provide for the development of 16 student flat/studios (comprising a total of 40 bed spaces).

Decision

1. The application for an award of costs is refused for the reasons given below.

Reasons

2. The National 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 or wasted expense in the appeal process.

3. The PPG also advises that examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. Other examples include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material consideration. PPG also notes that refusing planning permission on a planning ground capable of being dealt with by condition risks an award of costs.

4. The appellant contends that the Council approach to the application was inconsistent with the advice provided at pre-application stage and with best practice on pre-application guidance. The appellant also contends that additional issues relating to built heritage and a planning obligation were raised late in the process and that a condition could have overcome the Council's concern in respect of design. As a result of the above and the failure to obtain a timely decision, the appellant considers unnecessary costs have been incurred in having to appeal the decision.

5. It is common practice that informal advice given regarding an application is done so without prejudice and cannot pre-determine the outcome of a subsequent application. Therefore it was not unreasonable for the Council to

take a different view during the application stage. Whilst the Council's concerns regarding built heritage was unclear, the appeal had already been submitted at this point and this matter required a limited rebuttal only. Similarly, as my findings indicate in the accompanying appeal decision, the matter of an open space contribution was necessary in the context of the statutory tests but failed the test of being reasonably related based on the cases put forward by both parties. It was in the application of paragraph 14 of the National Planning Policy Framework that this issue was outweighed in my accompanying decision. Therefore I cannot agree that the appellant has incurred wasted cost in this respect.

6. Whilst I have taken a different view on the visual effect of the appeal, it is clear that the Council's concerns ran deeper than that of construction material and included a concern about the overall design of the existing building combined with the proposal. Consequently, based on the Council's stance, they had a reasonable basis to consider that a condition would not overcome their concerns.

7. In the absence of any substantive justification regarding the non-determination of the application, I consider that the Council behaved unreasonably. However, the evidence before me does not indicate that the appellant has incurred wasted cost owing to the delay in receiving a decision and submitting an appeal. Although I have taken a different view, the Council's subsequent reasons for refusal were adequately reasoned and justified and consequently an appeal could not have been avoided.

Conclusions

8. Therefore, I conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated. For this reason, and having regard to all matters raised, an award for costs is not justified.

B Bowker

INSPECTOR