
Costs Decision

Site visit made on 27 June 2017

by Michael Moffoot DipTP MRTPI DipMgt MCMI

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

Decision date: 27 July 2017

Costs application in relation to Appeal Ref: APP/E2734/W/17/3170713 Land to rear of Skellcross House, Ripon, North Yorkshire HG4 1NL

- 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 & Mrs Wansborough for a full award of costs against Harrogate Borough Council.
 - The appeal was against the refusal of planning permission for residential development for two, two storey dwellings and two single garages, access drive & hardstandings & change of use.
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Decision

1. The application is allowed in part in the terms set out below.

Reasons

2. The *Planning Practice Guidance* (PPG) advises that, irrespective of the outcome of the appeal, 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. It goes on to state that a local planning authority is at risk of an award of costs if it behaves unreasonably with respect to the substance of the matter under appeal, such as unreasonably refusing a planning application or unreasonably defending an appeal with vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
 3. The applicants submit that the Council behaved unreasonably in that it refused the application against the advice of its officers and statutory consultees and has failed to substantiate its reasons for refusal. Whilst the Council is not duty bound to follow the advice of its professional officers, it must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate its reasons if it takes an alternative view.
 4. The Planning Committee report refers to the *House Extensions & Garages Design Guide* (2005) and concludes that the appeal proposal would maintain satisfactory separation distances with neighbouring properties to ensure that existing levels of privacy and amenity are not significantly affected. The Council's appeal statement reiterates that the scheme would comply with the Design Guide requirements but submits that the proposal would harm neighbouring occupiers' amenity due to its massing, siting and density of development.
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5. The Design Guide makes it clear that the guidelines regarding the relationships between buildings may vary depending on the context. It suggests that in the centre of towns where the grain is tight new development may be closer to neighbouring buildings, and conversely new development in areas of very loose grain should maintain larger gaps between buildings. Whilst the proposal may conform to the separation distances stipulated in the Design Guide, the Council is entitled to apply the guidance flexibly to suit the circumstances of the site and its surroundings. It is thus a matter of subjective planning judgement for the decision maker on the individual merits of the case.
6. Although I have reached a contrary view to the Council on the merits of the proposal in relation to the first reason for refusal, the Authority has provided sufficient evidence to support its case which is based on reasonable planning grounds. In particular, by reference to the development plan and other material considerations, the Council has adequately demonstrated how it considers the proposal would harm neighbours' living conditions by reason of massing, close proximity to site boundaries and juxtaposition with surrounding dwellings. This, it is argued would result in a sense of enclosure for the occupants of surrounding dwellings, overshadowing and loss of outlook. The Council has not therefore acted unreasonably in coming to these findings.
7. The second reason for refusal relates to flood risk. Following the Environment Agency's (EA) objections to the proposal on the basis of the initial Flood Risk Assessment (FRA) the applicants submitted a Supplementary Flood Risk Assessment (SFRA) to address the concerns. As a consequence, the EA confirmed withdrawal of its objections subject to a planning condition requiring the development to be undertaken in accordance with the FRA and SFRA, including proposed mitigation measures in relation to surface water run-off, finished floor levels and flood proof/resilient construction techniques.
8. The appeal site lies in Flood Zone 2. In its appeal statement the Council refers to Policy EQ1 of the *Harrogate District Local Development Framework: Core Strategy* (2001) and guidance in the *National Planning Policy Framework*, which between them seek to minimise flood risk by steering new development to Flood Zone 1 with a low probability of river or sea flooding and avoiding development in Flood Zone 2 where there is a medium probability of river or sea flooding.
9. However, the objection is not supported by any objective analysis or compelling technical evidence to demonstrate that the appeal proposal would increase flood risk on the site or elsewhere. The Council has failed to explain how, in light of the EA's revised advice, the appeal proposal would conflict with national and local planning objectives which seek to minimise flood risk. This amounts to unreasonable behaviour.
10. In relation to the third reason for refusal, the applicant's Ground Stability Report advises that prior to any development commencing, further investigation into the site should be undertaken in the form of shallow trial pits and boreholes. It also recommends that further intrusive investigation is undertaken to establish the condition of the underlying superficial deposits and bedrock, the results of which will allow for further foundation recommendations to be made. Moreover, the accompanying Ground Stability Declaration Form advises that the site history, site inspection and geotechnical desk study information available is inadequate to reasonably assess the stability of the site.

11. In these circumstances, and in the absence of compelling evidence to address these outstanding matters, the Council acted reasonably in adopting a cautious and diligent approach to the issue of ground stability which the applicants have had to address in pursuing this appeal.
12. In summary, I conclude that the Council did not exercise unreasonable behaviour in respect of the first and third reasons for refusal. There was unreasonable behaviour in respect of the second reason however, which has resulted in the applicants incurring unnecessary expense in addressing this reason as described in the PPG. A partial award of costs relating to this ground only is therefore justified.

Costs Order

13. 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 and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Harrogate Borough Council shall pay to Mr & Mrs Wansborough the costs of the appeal proceedings described in the heading of this decision; those costs limited to the second reason for refusal relating to flood risk.
14. The applicant is now invited to submit to Harrogate Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an 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 Cost Office is enclosed.

Michael Moffoot

Inspector