



Costs Decision

Site visit made on 25 July 2017

by Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

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

Decision date: 8 August 2017

Costs application in relation to Appeal Ref: APP/B1930/W/17/3172522 9 & 11 Crossfields, St Albans AL3 4NF

- 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 H & F Hester for a full award of costs against St Albans City & District Council.
 - The appeal was against the refusal of the Council to grant planning permission for the demolition of 9 & 11 Crossfields and erection of four dwellings.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The Case for the Applicant

2. The claimant considers the Local Planning Authority to have acted unreasonably for the following reasons.
3. The reason for refusal is vague and poorly composed. It refers to Policy 70 (iv) Parking and Garaging but offers no explanation as to why the proposal fails to comply with this policy that is whether it's the number of spaces or the visual appearance of the parking areas.
4. The Council's appeal statement seeks to introduce additional reasons for refusal. It refers to pedestrian safety which is covered by Policies 34 and 70 (iii). Furthermore, the Council's argument on this issue is erroneous, based on a misreading of the plans and ignores the advice of the County Highway Officer.
5. The Council's reason for refusal is inconsistent with a previous determination by the Council. It objects to elements of the scheme that were deemed acceptable previously. The development should have been approved based on the Council's previous decision.
6. The unreasonable behaviour has directly caused the Applicant to incur unnecessary or wasted expense in the appeal process by necessitating the appeal be made.

The Response by the Council

7. The refusal is not unreasonable as the Council has taken into account the material considerations and has come to the view that the proposal is not compliant with the applicable planning policies and should therefore be refused. The Local Planning Authority has not acted unreasonably in its assessment and determination of the case and in its presentation of the appeal case.

Reason for Refusal is Vague and Poorly Composed

8. The Council is of the view that the reason for refusal is detailed and specific referencing the policies and the specific parts of the policies which are not complied with. Members were concerned about the parking and the over-dominance of the motor car in the proposed development and specifically referred to this part of Policy 70.

Appeal Statement: Additional Reasons for Refusal

9. The reference in the reason for refusal to LPR Policy 70(iv) related to the need to provide safe and attractive space (as detailed in Policy 70 (i)). LPR Policy 70(iv) refers to the provision of parking "*without allowing the motor car to dominate public areas*". This is addressed in the Council's appeal statement, at page 5. The appeal statement does not introduce new issues, it simply provides evidence to demonstrate non-compliance with Policy 70(i). The matter of road safety is not a new issue, because LPR Policy 70(i) requires development to be safe and attractive. The lack of a satisfactory pedestrian access is referred to as evidence of the unsafe nature of the proposed development, in so far as the footpath shown to be provided does not meet even the absolute minimum standard set out in Roads in Hertfordshire.
10. The access road and parking area would most likely be private and unadopted. Whilst the consultee response from the Highway Authority is noted, it is not unreasonable for Members of the committee to conclude that the scheme is not acceptable on matters of parking and layout. It is appropriate for the appeal statement to consider these aspects and matters under Policy 70 (i) and (iv), which include the creation of safe, attractive spaces, and provide evidence to demonstrate how these aspects of Policy 70 are not met by the proposal.

Reason for Refusal: Inconsistent with Previous Determination by the Council

11. Each application needs to be determined on its merits and Committee members had not previously considered or assessed the previous proposal. It is not unreasonable for Committee members to overturn a recommendation for approval if their assessment of, and conclusions on, the material considerations are different to those of their officers.
12. It is considered that there were grounds for the Council to reach a different decision to the earlier determination and that the substantive reasons for coming to a different decision have been made clear in the reason for refusal and supported by the arguments in the Council's appeal statement.

Reasons

13. Article 31 of the Town and Country Planning (Development Management Procedure) Order 2010, requires the decision notice to '*state clearly and precisely their full reasons for refusal.*'
14. Rather than setting out a series of numbered reasons for refusal the decision notice sets out a single reason for refusal in one sentence, subdivided into clauses as follows:
 1. '*The application does not comply with:*

Policy 69(i) of the Local Plan because of the scale and character of the proposal and its height, size, scale and density in relation to No 15 Crossfields;

Policy 70(i) Design and Layout as it does not create safe attractive space of human scale;

Policy 70 (iv) Parking and Garaging,

or address privacy between dwellings as Plots 3 and 4 do not provide a tolerable level of privacy in relation to No 15 Crossfields.

15. The reason is not clear or precise as to how the policies are contravened and it does not include any explanation of why the scheme does not comply with Policy 70(iv) or why this is harmful. That is unreasonable behaviour.
16. The Council's appeal statement initially defines 2 main issues as: '*firstly the impact of the proposed development on the character and appearance of the locality; and secondly, the effect of the proposals on the living conditions of the occupiers of adjoining properties in relation to privacy.*'
17. Under the heading '*Character and appearance of the locality*' the appeal statement first seeks to substantiate that part of the reason relating to Policy 69(i). However it misapplies Policy 69(i) in relation to density as the Local Plan policy and its footnote provides specifically that residential density is to be measured according to the number of habitable rooms per hectare and that is not attempted. The reasoning concentrates instead on plot size which remains of some relevance to issues of scale and character.
18. The Council's definition of main issues for the appeal makes no reference to either parking or safety. But under the character and appearance heading and with reference to Policy 70(i) the statement then seeks to raise an issue of highway safety. The Council's own design guidance makes clear that is not an issue for Policy 70(i) which relates to matters of security. Pedestrian safety is instead covered by LP Policies 34 and 70(iii) to which neither the decision notice nor the appeal statement make reference. The appeal statement seeks to rely on a claimed conflict with the Highway Authority's own design guidance which was not referred to in the decision. In any case the guidance has been misinterpreted by the Council since it does allow for shared surface accesses with service strips in these circumstances and it does not require the provision of separate footways as claimed.
19. The national Planning Practice Guidance provides that a procedural award of costs may be made where information is provided that is manifestly inaccurate or untrue. The highway authority has confirmed that the access does accord with its own guidance. The evidence on this matter is thus inaccurate and the Council has acted unreasonably.
20. Still under a character and appearance heading the statement claims an under-provision of parking contrary to LP Policy 40. That was not clearly or precisely stated in the reasons for refusal or included in the definition of main issues in the appeal statement. Moreover the alleged harm from under-provision is not defined other than that this is said to be an issue of serious concern for local residents. That is also unreasonable behaviour.

21. Turning to the Living Conditions the statement acknowledges that the development would comply with the minimum rear window to rear window separation distances set out in LP Policy 70(vi). It then fails to substantiate why a greater separation distance should be required when rear bedroom windows face front bedroom windows. The policy and guidance make no such provision. Under the heading of living conditions the statement also claims harm from an overbearing impact on the neighbouring property at No 15 Crossfields. That was not clearly expressed in the reason for refusal. Whilst the statement claims a breach of Policy 70 in respect of living conditions, it does not clarify how either an overbearing impact or the failure to provide separation distances between windows well in excess of that policy requirements breaches that policy. That is unreasonable behaviour.
22. Paragraph ID 16-049-20140306 of the national Planning Practice Guidance provides amongst other things that a local planning authority may be at risk of an award of costs where it is not determining similar cases in a consistent manner.
23. In this case the Council previously refused permission for a scheme on the same site. In that proposal the frontage development was of very similar design to the current scheme and the provision for parking was also less than that set out in LP Policy 40 but those were not reasons for refusal. Neither was loss of privacy stated as a reason for refusal. Instead the 3 reasons for refusal in that case were in summary that:
 1. The 3 dwellings then proposed at the rear of the site would have been visually overbearing when viewed from the gardens of Nos 5 and 15.
 2. A harmful impact on trees
 3. A failure to demonstrate that a refuse vehicle could turn on site.
24. In this case it is immaterial that the previous planning application was determined by officers under the Council's delegation scheme and that the current application was determined by members. Both decisions were made by the Council. The claimant was entitled to expect the Council as a body to be consistent when dealing with the same issues on the same site. It was therefore unreasonable for the Council to refuse permission in relation to the number of parking spaces, privacy and the design of the frontage properties when there was no material difference compared to the previous scheme which had been judged acceptable in these regards.
25. In the current proposal the design of the 2 semi-detached houses at the rear differs significantly from that of the 3 larger houses proposed previously. The reduced scale number and scale of those dwellings had reduced their impact on their surroundings. Members would have been reasonably entitled to reach a different view from their officers on the subjective elements of their assessment of character and appearance provided that the reason was clearly expressed and that it was supported by substantive evidence at the appeal stage. But in this case the reasons were not clearly expressed, the evidence misapplied the Council's policies and highway authority guidance in relation to density and highway safety, and it confused criticism of the backland development with criticism of the design of the frontage development that had previously been found acceptable.

26. Overall I conclude for the above reasons that the Council has behaved unreasonably and has caused the Applicant the unnecessary expense of the appeal.

Costs Order

27. 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 St Albans City and District Council shall pay to H & F Hester, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
28. The applicant is now invited to submit to St Albans City and 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.

Robert Mellor

INSPECTOR