The Planning Inspectorate

Costs Decision

Site visit made on 8 August 2017

by Helen Hockenhull BA(Hons) B.Pl MRTPI

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

Decision date: 22 August 2017

Costs application in relation to Appeal Ref: APP/N4720/W/17/3172890
84 Kirkstall Road, Leeds, LS3 1LS

- 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 David Barrass for a full award of costs against Leeds City Council.
- The appeal was against the refusal of planning permission for the variation of condition 3 (approved plans) of approval 11/01850/EXT to allow a variation in mix of accommodation, amended drawing to indicate residential use adjacent to Kirkstall Road and amendment to affordable housing requirement without complying with conditions attached to planning permission Ref 15/05029/OT, dated 4 November 2016.

Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that irrespective of the outcome of an appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

3. The basis of the submission put forward by the applicant is that the Council attached a condition to a planning permission which they acknowledge was designed to ensure the development completes. Such a condition is in contravention of the National Planning Policy Framework (the Framework), the PPG as well as established case law and is unreasonable, unnecessary and unenforceable. It is also submitted that this action and the decision to refuse to remove the condition, amounted to unreasonable behaviour delaying a development which clearly should have been permitted.

4. The applicant also argues that the Council made vague generalised and inaccurate statements about the developments impact. Furthermore it is submitted that as a similar condition has not been imposed on other developments in the area, the Council failed to determine planning applications in a consistent manner. I shall address each of these points in turn.

5. I have acknowledged in my decision that whilst the Council has stated in evidence that the objective was to ensure that the development was completed, the reason for the condition does not say this, rather it refers to protecting the visual amenity and character of the area. Nevertheless I have found the condition to be unnecessary, unreasonable and unenforceable. It does not meet the guidance in the Framework or the PPG. As advised in the

guidance[1], this amounts to unreasonable behaviour which may give rise to an award of costs. I am not however persuaded that the imposition of the condition and the refusal to remove it delayed a development that should have been permitted. There was still an implementable planning permission subject to the discharge of the attached conditions. Furthermore I have been provided with no evidence that a developer was in place at this time to take the site forward. Therefore on the basis of the evidence before me, I consider that the redevelopment of the site has not been materially delayed.

6. In relation to whether the Council made vague, generalised and inaccurate statements, I consider that the Council explained why it was considered necessary to impose the condition. Reference is made to the site's long planning history, lack of development both pre and post-recession and changes to the housing mix. Part of the Council's consideration was the possibility of a developer making a 'technical start' on site. Whilst I am not aware of any evidence to support this, I consider it was reasonable for the Council to look at the potential impacts on the visual amenity of the area should this happen. I do not therefore consider that the Council behaved unreasonably in this regard.

7. Turning to the matter of inconsistent behaviour, the applicant has brought my attention to the fact that the condition in question was not imposed on the original planning permission in 2008 or on its renewal in 2011. Furthermore I am advised that such a condition has not been required on other nearby sites. This has not been disputed by the Council.

8. The Council put forward evidence to justify the reasoning for imposing the condition in this case, namely the fact that the redevelopment of the site had effectively stalled, despite the Council's approval of changes to the scheme to improve viability. It appears to me that this situation is not uncommon with proposals on urban brownfield sites. I am not satisfied that the circumstances of this case were so different as to warrant the imposition of the condition. Therefore I consider that the Council in imposing the condition on the appeal development acted inconsistently, not determining applications in a like manner.

9. In summary I have found unreasonable behaviour on the part of the Council as the condition imposed did not meet the tests in paragraph 206 the Framework and the Council has not determined applications in a like manner. This gave rise to the applicant making the appeal and incurring the associated expense. 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 full award of costs is justified.

Costs Order

10. 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 Leeds City Council shall pay to Mr David Barrass, the full 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.

[1] PPG Paragraph: 049 Reference ID: 16-049-20140306

11. The applicant is now invited to submit to Leeds 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.

Helen Hockenhull
INSPECTOR