
Costs Decision

Site visit made on 12 July 2017

by Jason Whitfield BA (Hons) DipTP MRTPI

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

Decision date: 11th September 2017

Costs application in relation to Appeal Ref: APP/X1355/W/17/3172638 Land to North Side of Holly Street, Holly Street, Durham DH1 4ER

- 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 Paul Thapar, Nelson Yard Limited for a full award of costs against Durham County Council.
 - The appeal was against the refusal of planning permission for the construction of 60 bedroom student accommodation.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (the Guidance) 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 expense in the appeal process. Unreasonable behaviour in the context of an application for an award of costs may be either procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).
3. The applicant's case is largely based on the fact that the officer recommendation for the original planning application was for approval and that, in officer's views, the appellant had put forward a strong case for the proposal. The applicant suggests that the Council's planning committee erred in coming to the conclusions it did as there was no evidence available on which it could have come to the conclusion that need had not been demonstrated and thus, the conclusions were unsubstantiated.
4. Firstly, members are not duty bound to follow the advice of their professional officers. Indeed, as the applicant points out, the officer report recognised that there had been a careful balance to be had in respect of the harm against the benefits in reaching a positive recommendation. Furthermore, I have come to the same conclusion as members in respect of the effect on the character of the area and the living conditions of neighbouring residents. Whilst officers and the applicant came to the view that the proposal itself would not result in an imbalance of the community, I am satisfied that there was sufficient evidence before me to come to the conclusion that the proposal would harmfully exacerbate a community which is currently strongly imbalanced. In that sense, the proposal would not contribute towards mixed communities as required by the National Planning Policy Framework. It follows, therefore, that

I am satisfied that, in coming to a similar view, members based their decision on substantive evidence.

5. Moreover, in respect of living conditions, it is evident that members visited the site and would have had the opportunity to assess some of the issues at first hand, in particular the issue of living conditions, which as the applicant points out, officers had found separation distances to be substandard. Indeed, the officer report is clear that there would be harm to the living conditions of neighbouring residents and balanced that against the benefits of the scheme. It seems to me that the members also undertook that balance and there is nothing unreasonable in members coming to an alternative conclusion.
6. In addition, whilst I have concluded otherwise, it seems to me from the committee meeting minutes that, in reaching the view that the applicant had not sufficiently demonstrated need, members took into account a wide range of evidence and both quantitative and qualitative analysis. The minutes show consideration of figures of student accommodation occupation within the city. It is also clear that members considered both the officer report in great depth, as well as substantive objections from local residents, including the Durham City Neighbourhood Planning Forum. Thus, whilst I am satisfied the applicant has suitably demonstrated need for the proposal, I see nothing in the Council's conclusions to suggest that its decision was based on vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis nor do I consider that it has failed to produce evidence to substantiate each reason for refusal on appeal. It follows therefore that I consider the Council has not prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

Conclusion

7. For the reasons above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

Jason Whitfield

INSPECTOR