
Costs Decision

Site visit made on 30 October 2017

by Jonathan Hockley BA(Hons) DipTP MRTPI

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

Decision date: 24th November 2017

Costs application in relation to Appeal Ref: APP/W3710/W/17/3180902 Land to the rear of 63-65 Regent Street, Nuneaton CV11 4BL

- 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 B Carroll for a full award of costs against Nuneaton & Bedworth Borough Council.
 - The appeal was against the refusal of planning permission for Renewal of expired Planning Approval 030464 for a 5 year approval. Two new dwellings, 63-65 Regent Street.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) states that costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour in the context of an application for an award of costs may be either procedural or substantive.
3. The history of the appeal site includes an approval granted in 2013, which expired in 2016. The appeal application linked to this costs case sought to replace that consent. The costs application is based on one main ground, concerning the actions of the Council in failing to grant a further planning permission for a scheme that is the subject of a recently expired permission where there have been no material changes in circumstances to the previous approval on the site.
4. In my appeal decision I note that the Officer Report for the 2013 case appears to be written as a refusal on the same grounds as the 2016 case, yet the consent was granted. The current proposal contains the same essential plans as those which were approved in 2013, and the development plan remains the same as that which was in place in 2013. From the information before me I have found nothing to suggest that there have been any other significant changes in circumstances that might have been material to the determination of the two planning applications in question.
5. Furthermore, the Local Planning Authority has not addressed this apparent inconsistency in either their 2016 Officer Report or their appeal statement. They have also failed to defend their decision in response to this application.

6. Given this, I consider that the Council have behaved unreasonably in failing to grant a further planning permission for a scheme that is the subject of a recently expired permission where there has been no apparent material change in circumstances. Furthermore, the Council have acted unreasonably in failing to justify or explain their change in view between the 2013 and 2016 schemes.
7. In my main decision I have concluded that the proposal would harm the living conditions of adjacent residents and so have agreed with the Council on this matter. Given this conclusion, and despite the lack of justification provided by the Council, I do not consider that the Council's unreasonable behaviour has led to the applicant incurring unnecessary expense in the appeal process concerning matters of living conditions.
8. However, I have found that with suitable conditions, no harm would be caused to matters of highway safety. On this matter therefore the unreasonable behaviour of the Council has led to unnecessary expense being incurred by the applicant.
9. The applicant seeks the full cost of pursuing the appeal. Due to my above conclusions I do not consider that full costs are justified; however, I agree that a partial award relating to the production of evidence in their appeal submissions concerning highway matters is fully justified.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

11. 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 Nuneaton & Bedworth Borough Council shall pay to Mr B Carroll, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the production and submission of evidence relating to matters of highway safety; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Nuneaton & Bedworth Borough 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.

Jon Hockley

INSPECTOR