The Planning Inspectorate

Costs Decision

Site visit made on 9 September 2019

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2019

Costs application in relation to Appeal Ref: APP/K2420/W/19/3232915
146 Hinckley Road, Barwell LE9 8DN

- 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 James Blake (Nine Points Property Ltd) for a full award of costs against Hinckley & Bosworth Borough Council.
- The appeal was against the refusal of planning permission for change of use from children's day nursery to residential care home for children with educational facility.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

3. The PPG sets out the type of behaviour that may give rise to a substantive award against a local planning authority (LPA) and includes situations where an LPA has 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. Another example of where there might be an award of costs is where planning permission has been refused on a planning ground capable of being dealt with by condition.

4. The appellants consider that the Council unreasonably refused planning permission for development which should have been permitted. They contend that the Council failed to produce evidence to substantiate the reasons for refusal and relied upon vague or inaccurate assertions about the proposals impact without any objective analysis.

5. I acknowledge that the officer recommendation to the Council's Planning Committee was for approval. However, members of the Committee are not duty bound to accept any recommendation and are entitled to apply weight to the material considerations before them before coming to a decision. In this case, the members of the Committee were persuaded by the concerns of a third party in relation to the potential for increased noise and disturbance. In coming to this view, it is particularly notable that at the time of the decision, a noise survey had not been provided by the appellant. This might have persuaded members of the Committee to reach an alternative conclusion.

6. Therefore, whilst the Council's reason for refusal was not supported by technical evidence, nor was the appellant's planning application submission. It was reasonable for members to seek to protect the living conditions of existing residents in the absence of such evidence and to make a planning judgement based upon the evidence before them at the time of the decision. The reason for refusal also cites the relevant policy within the development plan when considering the impact of a proposal on the living conditions of adjoining occupiers.

7. The appellant and Council officers had negotiated the provision of a high boundary fence to the boundary with No 144 Hinckley Road. However, there is nothing to suggest this would be a fence designed specifically for noise attenuation. With no noise calculations to demonstrate that this would be either effective or necessary at the time of the decision, I can appreciate why the provision of a fence, secured by condition, would not have been the convincing factor which might have led members of the Committee to reach a different conclusion. The noise assessment now provided as part of the appeal submission concludes that there would not be an increase in noise. Therefore, whilst I have found that a new boundary fence would assist in retaining a suitable level of privacy, I have not been persuaded that a fence is required specifically in the interests of reducing noise and disturbance.

8. I therefore conclude that the Council was within its rights to make the planning judgement it did in the absence of any technical evidence at the time of their decision. This is particularly so given the sensitives raised by a third party in respect of the potential for noise and disturbance. Consequently, I find that there has not been unreasonable behaviour which has caused unnecessary expense in this instance and the application for costs is refused.

M Russell

INSPECTOR