
Costs Decision

Site visit made on 5 August 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 November 2019

Costs application in relation to Appeal Ref: APP/P3040/W/19/3229690 Land South West of 98 Nicker Hill, Keyworth NG12 5ED

- 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 Adam Bolton for a full award of costs against Rushcliffe Borough Council.
 - The appeal was against the refusal of planning permission for a new build single dwelling.
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Decision

1. An award of costs is not made.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeals process.
3. The substance of the Applicant's case relates to the actions of the elected members in deciding to refuse the application. The proposals were recommended for approval by the planning officer, but members determined that planning permission should not be granted as they considered that the proposal would cause noise and disturbance to the occupiers of the dwellings closest to the site.
4. The Applicant is critical of the members for not having made their concerns known during the time that the application was under consideration. That would be unusual, as it is normal practice for a local authority to allow its planning officers to carry out any necessary discussions with applicants over a proposal and then report the findings to the planning committee when and if a decision at that level is required. To do otherwise would cause some confusion for all parties.
5. It is understandable that the Applicant was disappointed at the outcome of his application. Having been under the impression that he had resolved the concerns which planning officers had raised, he then found that the planning committee refused permission. However, planning committees are required to hear all sides when a proposal comes before them, and in this case, there were significant objections raised by local residents. In determining applications, committee members are not required to follow the recommendations of officers where they place a different interpretation on the merits of a proposal, as has been the case here.

6. The Applicant specifically criticises the Council for not seeking the advice of its environmental health officer (EHO) on the proposal, given that the principal concern related to noise and disturbance from the proposed dwelling and the effects that would have on neighbours. The Council, in its response to the claim, says that the EHO was not consulted on the proposal since the case officer did not see noise as an issue. Whilst the decision to refuse planning permission due to concerns over noise and disturbance is clearly at odds with the stance of officers, I do not regard this point, alone, as justifying the claim that the Council acted unreasonably in its decision.
7. The PPG is clear that costs cannot be claimed for expenses incurred as part of the determination of a planning application. However, actions at the time of the planning application can be taken into account if the applicant has proceeded to make an appeal. I recognise that in view of the Council's decision to refuse planning permission the Applicant has seen the need to engage an acoustic consultant to assess the impact which the proposal would have in terms of noise, as part of his appeal, and will have incurred expense as a result.
8. I have taken into account the examples given in the PPG of the type of behaviour by a local planning authority which may lead me to award costs in this case. The most relevant instance is whether the Council has simply sought to delay development which should clearly be allowed. However, the Council has explained that the concerns of its members regarding the access to the proposal, and the disturbance that would cause given its proximity to existing properties, were genuine.
9. On that basis, it has not been demonstrated that the Council has acted unreasonably in this case. As such there can be no question that the Applicant was put to unnecessary or wasted expense in the appeal process.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated.

Tim Wheeler

INSPECTOR