
Costs Decision

Site visit made on 8 October 2019

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th November 2019

Costs application in relation to Appeal Ref: APP/V2004/W/19/3227862 170 Coltman Street, Kingston-upon-Hull HU3 2SQ

- 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 Mark Girdham (Myton Gate Property Group) for a full award of costs against Kingston-upon-Hull City Council.
 - The appeal was against the refusal of planning permission for conversion of 4 flats into 8 bedroom HMO.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) 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. It also states that examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. 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 Council's decision to refuse planning permission was done so against the advice of its officers. Whilst the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached it has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
4. The reason for refusal relates to the impact of the proposed development on local amenity and highway safety due to the additional demand for on-street parking spaces it would generate in the evening. The Council's appeal statement indicates that the parking surveys provided were not comprehensive and that they instead represented a snapshot at certain times of day. Whilst this may well be the case the surveys do provide sufficient evidence to show capacity for on-street parking within the vicinity of the appeal property both in the mornings and in the evenings.

5. Furthermore, whilst the Council does acknowledge the proximity of the appeal property to public transport and services and argues that this does not mitigate the shortfall in vehicle parking provision it does not take this into account when applying the standards set by Hull Local Plan (HLP) Policy 32 which it fails to do in the flexible manner stipulated by this Policy. The Council's statement states that the reason for this is the fact that an excessive proportion (65%) of properties on Coltman Street comprise rented flats or Houses in Multiple Occupation (HMOs) whilst acknowledging that the percentage for HMOs on their own would be 2.5%. However, the Council does not provide any substantive evidence to support this position other than stating the percentages which on their own would be insufficient to overrule the application of flexibility within HLP Policy 32.
6. Moreover, the Council's decision notice sets out that the proposed parking arrangements would cause harm to the amenities of the area. However, it provides little evidence to substantiate any perceived harm in this respect.
7. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the Guidance and the appellant has been faced with the unnecessary expense of lodging the appeal.
8. As a result, I find the Council has behaved unreasonably by producing vague, generalised or inaccurate assertions about the impact of the appeal proposal which are unsupported by any objective analysis. I also find unreasonable behaviour in the Council's failure to produce adequate evidence to substantiate the reason for refusal on appeal.
9. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that an 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 Kingston-upon-Hull City Council shall pay to Mr Mark Girdham (Myton Gate Property Group), the 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.
11. The applicant is now invited to submit to Kingston-upon-Hull 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.

C Coyne

INSPECTOR