
Costs Decision

Site visit made on 28 October 2019

by E Symmons BSc (Hons), MSc

an Inspector appointed by the Secretary of State

Decision date: 11 November 2019

Costs application in relation to Appeal Ref: APP/W4325/W/19/3229091 Unused Land, Lees Avenue, Rock Ferry CH42 2BJ

- 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 C Ford (Landcare) for a full award of costs against Wirral Metropolitan Borough Council.
 - The appeal was against the refusal of outline planning permission for a new-build of 21 no. two bedroom flats.
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Decision

1. The application for costs is refused.

Reasons

2. Irrespective of the outcome of an appeal, the Planning Practice Guidance¹ (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 appeal process.
3. The appellant contends that the Council has been unreasonable for the following reasons and I will consider each in turn:
 - the Council relies on vague and generalised assertions about the proposal's impact which is unsupported by any objective analysis or technical assessment; and
 - the reasons for refusal relating to waste/refuse and parking have been resolved by active encouragement of a car free policy.

Quality of evidence supporting the Council's decision

4. The appellant contends that the appealed planning application was a resubmission of application reference OUT/14/00449. It is considered by the appellant that both proposals have a similar bulk, size, layout and appearance and that irrespective of this, the Council have determined that the current proposal is incongruous and bulky. Although the plans for the previous proposal have not been submitted, the description within its Decision Notice is for erection of ten, four-bedroom townhouses with gardens. This differs from the proposal which is the subject of the appeal which is for 21 two-bedroom flats. In all likelihood the two applications would have a different appearance and scale with respect to numbers of occupiers and vehicle use.

¹ PPG "Appeals", paragraph 028, reference ID: 16-028-20140306; revision date: 06 03 2014.

5. With respect to character and appearance, the Council justify the reasons they consider the proposal bulky and incongruous within the context of the local area referencing the character of the surrounding terraces. Additionally, with respect to the living conditions of future and neighbouring occupiers, the Council have justified their decision and sought the views of technical experts and made reference to planning guidance and policy within their reasoning.
6. Each application must be determined on its own merits and irrespective of a decision taken within an earlier consented proposal. The opinion of the Council, having been substantiated by technical advice, is one of planning judgement. Therefore, with respect to the reasons for refusal cited, I do not consider that the Council was vague and overly general in its assessment and were not unreasonable in exercising their planning judgement.

Reasons for refusal have been resolved

7. The appellant contends that the Council's concerns regarding highway safety and waste collection, have been resolved by their active promotion of a car free policy. It is also suggested that agreement for reduced car parking requirements had been reached with the Council. However, no evidence to support the presence of an agreement is before me. Additionally, the Council do not refer to such an agreement within either their Officer Report or its Statement of Case. The technical advice they sought states reasons why the proposal would harm highway safety with respect to the access route; feasibility of parking space use; potential displacement of vehicles from the site into the surrounding streets, and safety concerns regarding waste collection arrangements. This opinion is supported by sound reasoning and reference to policy and planning guidance. I therefore find that unreasonable behaviour has not been demonstrated.

Conclusion

8. I consider the Council evaluated the application and considered the merits of the scheme. Consequently, the appeal could not have been avoided. The Council had reasonable concerns about the impact of the proposal and justified its decision with reference to technical advice. During this process the Council exercised its planning judgement which is not unreasonable. As outlined above and detailed within my Appeal Decision, there was cause for concern regarding potential harm to the character and appearance of the area, highway safety and the living conditions of neighbouring and future occupiers. As such I do not consider that the Council have refused an application which could have been deemed acceptable through a planning condition.
9. Taking into account the matters raised, I find that unreasonable behaviour resulting in unnecessary or wasted expense within the appeal process, has not been demonstrated. The application for costs is refused.

E Symmons

INSPECTOR