



Costs Decision

Site visit made on 19 November 2019

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 December 2019

Costs application in relation to Appeal Ref: APP/W2465/W/19/3236426 Platform Apartments, 21 Andover Street, Leicester LE2 0JA

- 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 Bass for a full award of costs against Leicester City Council.
 - The appeal was against the refusal of planning permission for external alterations to residential building (Class C3) and alterations to existing roof; creation of 8 no. residential units; and associated works.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. The PPG states that the circumstances when the behaviour of a local planning authority might lead to an award of costs can either be procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal.
4. The appellant states that the Council failed to act in a positive manner during the application process, by withholding consultee comments, through planning officers taking pre-determined positions when engaging with consultees and by introducing a second reason for refusal not previously raised in discussions. The appellant further alleges that the Council's reasons for refusal were based on vague, generalised or inaccurate assertions and that, on the basis of the evidence available, the Council's conclusion of 'substantial harm' to the heritage significance of the South Highfields Conservation Area was unreasonable, as was its failure to apply the 'tilted balance' of the National Planning Policy Framework.
5. The Council contends it has acted reasonably and points to the informal nature of internal discussions between officers during an application, which should not be compared to the formal officer's report or decision notice. The Council also refers to ongoing email dialogue between the planning officer and appellant's

- agent, including allowing submission of an amended scheme to address initial concerns, as evidence of its positive engagement with the appellant.
6. I have had regard to the matters raised surrounding the communication between officers and general conduct of the Council in determining the application. However, these matters related to the application process rather than the appeal process. For costs to be awarded, it must be demonstrated that the Council has behaved unreasonably in relation to procedural matters at the appeal stage. I have no substantive evidence that the Council has not adhered to the procedural aspects of the appeal. Ultimately, the Council's handling of the application is a matter for local government accountability outside of the appeal process.
 7. In respect of the inclusion of a second reason for refusal, the Council's delegated report explains its position, which is expanded upon in its appeal statement. Whilst the appellant criticises the lack of forewarning from the Council about this reason for refusal, this in part stems from the fact that the initial scheme proposed eight flats over two floors which would have been considerably larger in floorspace. It was only when the revised scheme was submitted that this concern could have reasonably emerged for the Council. Though a lack of forewarning is regrettable, the outcome of the appeal validates the Council's inclusion of this reason for refusal. Therefore, I do not find unreasonable behaviour in this respect.
 8. In terms of alleged inconsistency in determining similar cases, in particular with reference to the size of proposed units, I have had regard to the other decisions put forward by the appellant but, for the reasons set out in my main Decision, I do not consider them directly comparable with the appeal scheme, which the Council determined on its own merits. I find no unreasonable behaviour by the Council in this respect.
 9. In terms of the first reason for refusal, the Council has explained its position in respect of heritage matters in its appeal statement, including analysis of the elements of the proposal it considers would cause harm, namely the additional massing of the roof, and refers to conflict with specific development plan policies. The consideration of a proposal in terms of its effect on the significance of a designated heritage asset involves matters of judgement which encompasses necessarily subjective elements. Whilst I have not agreed with the Council's assessment of the degree of harm, this is similarly a matter of judgement.
 10. However, having identified harm, the Council did not appear in either its delegated report or its appeal statement to undertake the necessary balance of the Framework, whether that set out under Paragraph 195 or 196, and there is no clear consideration given to any public benefits of the proposal as is required. The outcome of this exercise forms part of the consideration as to whether the 'tilted balance' of Paragraph 11 of the Framework is engaged. Notwithstanding that the Council sought to explain its position with respect to the tilted balance in its appeal statement, or that I have ultimately agreed with the Council's position, I consider that in failing to take into account public benefits of the scheme and balancing this against identified harm to the significance of a designated heritage asset, the Council has acted unreasonably in these respects. However, for an award of costs to succeed, such behaviour

must also have result in unnecessary or wasted costs on the part of the party seeking costs.

11. In this respect, I find that the behaviour of the Council has not resulted in any wasted or unnecessary expense since, on the evidence of the Council's sustained objections to the proposal, it is likely that had it conducted the relevant Framework balance, its decision on the application would not have differed and would have led to an appeal in any event. Given the outcome of the appeal, the Council's actions did not prevent or delay development which should clearly have been permitted. On that basis, whilst the Council's behaviour in this respect was unreasonable, it did not cause the appellant unnecessary or wasted expense.

Conclusion

12. Having regard to the matters raised, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. No award of costs is therefore made.

K Savage

INSPECTOR