The Planning Inspectorate

Costs Decision

Site visit made on 3 December 2019

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 January 2020

Costs application in relation to Appeal Ref: APP/R5510/W/19/3236950
Land at 30 - 32 Chester Road, Northwood, Middlesex HA6 1BQ

- 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 Salim Rhemtulla - Seymour House Residential Care Homes Limited for a full award of costs against the Council of the London Borough of Hillingdon.
- The appeal was against the refusal of planning permission for development of 29 bed residential care home, alterations to access, to vehicular crossover and associated landscaping.

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. Other types of behaviour that may result in costs being awarded include where there has been a failure to produce evidence to substantiate each reason for refusal, where vague, generalised or inaccurate assertions have been made about a proposal's impact, where there has been a lack of co-operation between the local planning authority and the other party and where planning permission has been refused on a planning ground capable of being dealt with by conditions.

4. The appellant considers that planning permission should have been granted having particular regard to previous appeal decisions and that there have been no material changes to policy or site circumstances. The appellant also takes issue with the Council referring to the neighbouring care home development as being incongruous. Whilst the latter point is a subjective matter, I do not disagree with the Council's overall conclusion that the proposal itself would have a harmful effect on the character and appearance of the area. I therefore disagree that planning permission should have been granted given the conflict with the development plan and national policy.

5. The appellant contends that it was unreasonable for the Council not to have sought revisions to overcome their concerns. However, the Council had fundamental concerns with the design approach taken to provide accommodation at second floor level through the raising of the eaves height. Planning permission has previously been granted on the site for a scheme which provides second floor accommodation in a more subservient way. It is difficult to envisage what alterations could have been sought to overcome this particular concern without reverting to a design similar to the previously approved scheme.

6. I agree that there is a degree of subjectivity in the Council's conclusion that the proposal would be detrimental to the living conditions of occupants of No 28 in respect of noise, smell and odour and general disturbance. However, there was no substantive counter evidence to disprove these conclusions. On this basis, the Council was entitled to make a planning judgement about the potential impact on No 28. In any case, even if conditions had been considered to address these matters, it is likely that the planning application would still have been refused on the basis of the Council's other concerns. Given the lack of technical evidence provided by the appellant and that the matter was simply covered as part of their comprehensive appeal statement, it does not appear that the appellant has been put to any substantial expense in these particular respects.

7. Similarly, whilst I have found that a condition would be sufficient to restrict use of the building to a C2 Use Class, the appellant did not produce the legal agreement that was considered necessary by the Council. The appellant has therefore not been put to any considerable cost over and above their case in respect of the other matters relevant to the appeal.

8. The reference to the Council having not followed well established case law with regards to demolition works being sufficient to implement the previous planning permission on the site is a separate matter. Even in the event that the previous planning permission does establish a fall-back position, it does not follow that an alternative scheme that would result in material harm should be accepted.

9. With regards to affordable housing requirements, the Council's report concluded that developer contributions would not be required and this matter did not therefore prove determinative. It is also clear from the report that the Council understood the details of the design and the reference to a mansard roof in the decision notice was just an anomaly. Consequently, I am not persuaded these issues materially alter the Council's overall conclusions in respect of the potential impact of the development.

10. I sympathise to some degree with the appellant in respect of the Council's previous indication that the planning application was to be recommended for approval as well as the length of time it took the Council to determine the application. However, the correspondence only represented an officer opinion at that point in time and until a decision was formally made, the Council was entitled to come to an alternative view. Ultimately, given the fundamental design concerns, I am not persuaded that better communication with the appellant would have enabled the appeal to be avoided altogether. The appellant was also within their rights to submit an appeal against non-determination were they sufficiently concerned at the delays.

11. For the reasons set out, 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