



Costs Decision

Site visit made on 3 February 2020

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2020

Costs application in relation to Appeal Ref: APP/N1920/W/19/3239980 2 Station Road, Borehamwood WD6 1DF

- 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 Andrew Landesberg for a full award of costs against Hertsmeire Borough Council.
 - The appeal was against the refusal of planning permission for demolition of existing cottage and erection of a 4-storey building comprising 2 x 3 bed maisonettes & 7 residential dwellings (1 x 3 bed, 5 x 2 bed, 1 x 1 bed) with 6 parking spaces and associated refuse and cycle stores.
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Decision

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

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 appeal process. This application claims unreasonable behaviour by Hertsmeire Borough Council in terms of not substantiating its refusal reason, making a number of vague, generalised assertions about the proposal's impact, introducing fresh and substantial evidence at a late stage and failing to determine similar cases in a consistent manner.
3. The Council's officers recommended that planning permission be granted for the proposed development, however permission was refused for a single reason relating to parking provision. While the Council is not duty bound to follow the advice of its officers, it has to demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
4. The refusal reason states the proposal is likely to result in severe impacts on the local highways. However, the refusal reason and the appeal submissions provide no meaningful explanation as to what severe impacts the Council envisage would occur as a result of any roadside parking caused by the proposal. The Council relies upon local knowledge of what happens on a day to day basis to support its case, but there is no detailed explanation of any existing highway issues in the area or evidence to show how the proposal would exacerbate any problems. Instead, the Council's response to the appeal are unsubstantiated, broad assertions that parking as a result of the proposal would exacerbate local issues of gridlocked traffic and serious accidents.

5. As such, the Council has failed to properly substantiate its only stated refusal reason and has made vague and generalised assertions about the impact of the proposal in respect of parking and highway issues. This represents unreasonable behaviour that has required an appeal against the Council's decision to be lodged and unnecessary costs to be incurred as a result.
6. Furthermore, the Council's appeal statement includes comments from Councillor J Newmark raising concerns over various aspects of the proposal that are not referred to in the refusal reason. It is claimed that the Councillor's comments did not seek to introduce new refusal reasons, although this is not clear from the Council's appeal statement. Consequently, it is understandable that the Councillor's comments have been viewed as the introduction of new Council objections to the proposal that would require a response. The reference in the Council's appeal statement to concerns other than those on the Council's decision notice represents unreasonable behaviour that has caused additional costs in responding to the specific issues raised.
7. I have insufficient information to compare other proposals permitted by the Council to the appeal development. As such, I find no unreasonable behaviour by the Council in failing to determine similar cases in a consistent manner. Nevertheless, for the reasons set out above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

8. 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 Hertsmere Borough Council shall pay to Mr Andrew Landesberg, 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.
9. The applicant is now invited to submit to the 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.

Jonathan Edwards

INSPECTOR