
Costs Decision

Site visit made on 24 February 2020

by R E Walker BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2020

Costs application in relation to Appeal Ref: APP/B4215/W/19/3242025 Land East of Aspinall Street, Rusholme, Manchester X (Easting) 385130, Y (Northing) 395352

- 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 William Fulster for a full award of costs against Manchester City Council.
 - The appeal was against the refusal of planning permission for residential development (Use Class C3) of 9 no. one bed apartments in a two storey block (3 units on Ground floor and 6 units on first floor), with 5 no dedicated off street car parking spaces, dedicated residents bin and cycle stores and commercial bin stores to serve existing commercial and residential units to rear of proposed new block, together with associated infrastructure, vehicular and pedestrian access from Aspinall Street.
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Decision

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

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.
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.
4. The applicant submits that the Council has acted unreasonably, which has led to unnecessary or wasted expense in the appeal. The Council has defended itself in relation to all the allegations presented.
5. It is put to me that the Council provided misleading information to the applicant which was not fed through to the eventual reason for refusal. It is said that this caused confusion which required the applicant's instruction of a solicitor in order to advise on, prepare and submit the appeal.
6. From the evidence available, the Council's officer advised the applicant in advance of the determination that the application would be refused. It was clearly stated that highway and waste management matters were not reasons for refusal. However, I note that the eventual reason for refusal was not

- consistent with the email. The reason for refusal drew from the outlook of the existing properties rather than the outlook of the proposed apartments as indicated in the email. Moreover, the Council did refer within the email to an incorrect distance between the proposal and the existing properties.
7. However, the Council's delegated report, which has been submitted with the appeal, sets down clearly the officer's rationale for the eventual decision noting a correct separation of approximately 8m. It clearly outlines the Council's concerns regarding the effect on the living conditions of the occupiers of the existing neighbouring properties with reference to outlook and privacy. Moreover, it clearly considers the use of conditions as not being able to overcome the concerns it identified.
 8. It is put to me that the Council failed to provide an officer's report. However, both the officer report and the decision notice are publicly available documents. Whilst I recognise that it was not uploaded to the Council's public access system, I have no substantive evidence that the officer report was requested by the applicant and not provided by the Council.
 9. As the officer's report, ultimately, presented the correct distance upon which the decision was made, the Council has not behaved unreasonably in reaching its decision. Whilst it is a clear error in the officer's email, the incorrect reference to a 6m distance has not, in itself, demonstrably required the applicant to undertake additional work for the appeal. As no additional justification at the appeal stage on this matter was necessary, it does not constitute sufficient grounds for an award of costs.
 10. Although the Council's position regarding outlook appeared to evolve from the initial email, the Officer's report and decision notice clearly sets down the concerns that the decision was based on. I have no substantive evidence before me to conclude that the change in the Council's position on this matter during the application would have resulted in the appeal being avoided or caused additional expense during the appeal. Consequently, although I recognise that the Council's communication was substandard and will have been confusing and frustrating for the applicant, it did not in itself cause wasted expense in the appeal process.
 11. I recognise that the Council referred to the National Planning Policy Framework generally in the reason for refusal. Although the Officer's report does elaborate more on this, no specific paragraphs were referenced. However, it is clearly substantiated in the Officer's report that the concerns relate to the living conditions of the existing properties. Moreover, specific local planning policies are cited in relation to this matter. As such, I have no substantive evidence to demonstrate how the omission of specific paragraphs in the Framework has resulted in wasted expense in the appeal.
 12. I recognise that the appellant has sought to work with the Council and made changes to their scheme following a previous refusal with a view to finding a solution. This included the engagement of consultants to address specific technical issues. There is nothing before me to suggest that such technical reports were not necessary to assess the proposal.
 13. Moreover, it is not unreasonable for the Council to make an assessment on the effect on the living conditions of the occupiers of the existing neighbouring properties, as this exercises a certain amount of subjective judgement. It was

substantiated within the Officer's report. As such, I do not agree that the Council acted unreasonably in refusing the application on this basis. I confirm in this regard that I have made my own assessment on this matter.

14. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Robert Walker

INSPECTOR