



Costs Decision

Site visit made on 18 February 2020

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2020

Costs application in relation to Appeal Ref: APP/J3015/W/19/3241769 The Gables, 169-171 Attenborough Lane, Chilwell NG9 6AB

- 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 Harding (FX Property UK Limited) for a full award of costs against Broxtowe Borough Council.
 - The appeal was against the refusal of planning permission for change of use from a nursing and residential care home (use class C2) to four no. HMOs (use class C4).
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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 which has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG advises that local planning authorities are at risk of an award of costs for vague, generalised or inaccurate assertions about a proposal's impact, unsupported by any objective analysis, for failure to produce evidence to substantiate its reasons for refusal, or for preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

Reasons for refusal

4. A local planning authority is not duty bound to follow the advice of its professional officers. However, if a different decision is reached, the local planning authority must clearly demonstrate on planning grounds why a proposal is unacceptable, and substantiate that reasoning.
5. Neither the Council's environmental health officer (EHO) nor the local highway authority (LHA) objected to the application. However, whilst consultee responses are material considerations, the weight to attach to such comments is a matter of planning judgment for the decision maker.
6. Although the EHO did not object to the proposal, a planning assessment of likely noise and disturbance does not solely or specifically depend on there being a statutory nuisance under the terms of environmental health legislation.
7. It is evident from the submissions before me that, in reaching the conclusions it did with regard to noise and disturbance, the Council considered the

differences between the proposed and existing uses of the site. The Council clearly sets out its concerns that the proposed use would generate more comings and goings on an evening than the existing use, when background noise levels in the vicinity were lower. It is evident that its conclusions in that regard were based on a consideration of existing businesses and other uses nearby, and likely differences between the movements of future occupants of the proposed houses in multiple occupation (HMOs) compared with those of care home staff and residents. The Council also refers to the proximity of the bin store to the adjacent property, and to likely differences in the frequency of use of that area compared with the existing use, again drawing comparisons between the nature of the existing and proposed accommodation in that regard.

8. Turning to highways matters, the Council's concerns as set out in its reason for refusal and its statement refer not to the number of parking spaces being insufficient, but to the increased frequency of vehicle movements on the site frontage as a result of the increased number of parking spaces in that area. The Council's submissions in that regard are not vague or generalised. Rather, they identify particular hazards, including the site's location on a busy corner, close to the village hall, garage and public house, the nearby bend in the road and adjacent bus stops which, in its judgement, could give rise to highway safety issues as a result of more vehicles manoeuvring onto or off the site frontage.
9. With regard to both of those matters, I am therefore satisfied that the Council has clearly articulated and substantiated its concerns and reasons for refusal with reference to, and based on an objective analysis of, the particular circumstances of the site and the proposed development, and to development plan policies which seek to protect neighbours' amenity and highway safety. Whilst I have come to a different conclusion on those matters, the Council's reasoning is nonetheless clear, and I conclude that it has not behaved unreasonably in affording weight to those various matters raised and reaching the conclusions that it did as a matter of planning judgement, notwithstanding the absence of specific objections from the EHO or the LHA.
10. Accordingly, it follows that the appellant was not put to unnecessary or wasted expense as a result of an appeal which could otherwise have been avoided.

Time taken to determine the application

11. The application was reported to the Council's planning committee on three occasions, and was refused at the third meeting, having been deferred on the two previous occasions.
12. The committee's decision to defer the application inevitably led to a delay in its determination. However, in giving the appellant the opportunity to consider and respond to their concerns on each of those occasions before making a final decision, an opportunity which the appellant took up on each occasion, I consider that the committee's actions were pragmatic, proactive and entirely reasonable.
13. Whilst the committee still ultimately resolved to refuse the application, it is evident from the submissions before me that those amended and additional details from the appellant were reported to, and noted by, the committee, and I am satisfied that it had regard to those documents in reaching its decision.

14. The appellant refers to the additional time and expense incurred in providing further details and attending multiple committee meetings. However, the seeking of additional information and the attendance of appellants at committee meetings are not uncommon as part of the standard democratic process associated with the determination of a planning application. Furthermore, the PPG makes it clear that the award of costs can relate only to those costs incurred during the appeal process.
15. In any event, for the reasons given, I find that the Council's actions in deferring its decision and allowing the appellant to respond to its concerns through the provision of further information were not unreasonable. It therefore follows that the appellant has not been put to unnecessary or wasted expense in the appeal process due to any delay which arose as a result.

Conclusion

16. For the reasons given, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated in this case.

Jillian Rann
INSPECTOR