



Costs Decision

Site visit made on 9 March 2020

by Thomas Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 03 April 2020

Costs application in relation to Appeal Ref: APP/P3420/W/19/3237735 22 King Street, Cross Heath, Newcastle-under-Lyme ST5 9HQ

- 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 Jonathon Fell c/o Kaizen Property Group against Newcastle-under-Lyme Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for development described on the application form supporting application Ref 19/00135/FUL, dated 25 February 2019, as the 'erection of 2 x 3 bedroom semi-detached dwellinghouses within the existing rear garden of application site, incorporating the provision of 4 parking spaces, cycle spaces and refuse storage, new boundary treatment and landscaping.'
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However the Planning Practice Guidance ('PPG') explains how costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary expense at appeal.¹ Costs applications may relate to events, if not expenses incurred, before an appeal was brought.²
3. The appellant's case for a full award of costs is twofold. Firstly he contends that there is a fundamental divergence between what is said to be positive pre-application advice and the subsequent refusal of permission.³ The appellant refers to being 'requested' to make the case via planning application as to why access to the dwellings proposed could not be achieved via Derwent Place (and therefore the dwellings would not have a street frontage). He goes as far as to say that the Council's position in respect of 'backland' development in their decision notice in respect of application Ref 19/00135/FUL effectively amounts to a blanket opposition to such development. Secondly, the appellant argues that there would have been greater possibility of narrowing the issues in dispute, or avoiding the appeal, 'had the LPA acted more effectively and engaged with the applicant'. Neither argument bears scrutiny.
4. Pre-application advice cannot pre-empt a Council's formal decision. Even if it could, my reading of the pre-application advice in this instance differs to that of the appellant. Correspondence of 7 November 2018 and 26 April 2019 from the

¹ Reference ID: 16-028-20140306.

² PPG Reference ID: 16-032-20140306.

³ Pre application advice Ref 18/00485/PREAPP.

Council to the appellant offers a thorough critical review of the proposal. The former states that the Council has no in-principle objection to residential development in this location 'subject to detailed considerations regarding layout, design, amenity issues, highways and parking issues, forestry and landscaping conditions'. That is a big but. The latter clarifies that residential development here may be acceptable on account of the appeal site falling 'within a sustainable urban location'. The 2018 correspondence further states that 'the proposed layout isn't ideal, however the submission of a Planning Statement with any application should enable an argument to be put forward for this' (my emphasis). On a plain reading that offers no comfort that an argument would be successful, only that it could be made. The choice as to whether to proceed with an application was squarely for the appellant.

5. It is also important to distinguish between fact and judgement. I explain in the associated appeal decision that many properties nearby are laid out in a standard manner fronting streets, along a more-or-less consistent building line. Policy CSP1 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026 (adopted October 2009) sets out how development should integrate appropriately with the prevailing settlement pattern and townscape. Further the Council's joint Urban Design Supplementary Planning Document (adopted 3 November 2010) encourages development that 'faces outwards wherever possible', respects a consistent building line, and where the orientation of new buildings aligns with those nearby. Being tucked behind No 22 King Street, as a matter of fact the development proposed does not have an active street frontage nor aligns with a prevailing building line. Therefore it is a matter of planning judgement as to whether the proposal was acceptable.⁴
6. Moreover the appellant argues against himself as to whether the Council inherently oppose 'backland' development. Paragraph 3.10 of the appellant's costs application is that the Council's first reason for refusal in respect of application Ref 19/00135/FUL 'essentially suggests that any proposals for new dwellinghouses within 'backland' locations will be refused unless they front an active street frontage'. However paragraph 6.10 of the appellant's appeal statement is that the recent development of homes at Navigation Way near to the appeal site, approved via planning permission Ref 12/00036/FUL, 'incorporates many new dwellings on what was previously the rear gardens of residential properties... many of these new dwellings do not front Navigation Way itself and are instead accessed by newly created residential cul-de-sacs running between the curtilages of properties which do front Navigation Way'. That, in my view, underscores that each proposal must be determined on its merits and that the Council's position in respect of the development proposed to the rear of No 22 King Street was not arrived at by rote.
7. In respect of the appellant's second argument, the costs decision related to appeal Ref APP/K3605/W/17/3178231 has been brought to my attention. In that decision the Inspector reasoned that the need for, or scope of, an appeal could likely have been refined were pre-application advice more specific. However the circumstances there and here are not directly comparable.⁵ The

⁴ Other than in respect of arboricultural information, which does not relate to the substance of the costs application, the appellant does not challenge the factual accuracy of the Council's observations in so far as relevant to the first strand of his argument for an award of costs.

⁵ Not only in respect of the nature of the development proposed, but also as the other appeal entailed detailed consideration over the validity of the relevant application and the Council's administration of it.

National Planning Policy Framework ('NPPF') is strongly supportive of the value of pre-application advice, and guides that local planning authorities should approach decisions on proposed development in a 'positive and creative way'.⁶ However neither proactive working nor a positive mindset can render all proposals acceptable to both applicant and local planning authority. There is also a limit as to how far a Council can reasonably be expected to go towards resolving matters in dispute.

8. I have set out in the appeal decision how the appeal was supported by an updated Arboricultural Report, Transport Statement and Design and Access Statement, along with amended plans.⁷ Paragraphs 1.3.3 to 1.3.6 of the Transport Statement demonstrate how, before reaching a decision, the local planning authority considered alterations to site access compared to the original proposal. It appears that only in September 2019 were mutually-agreeable revisions in that respect arrived at. I also note that the Council has considered the updated Arboricultural Report at appeal, which itself highlights a number of inaccuracies with an earlier version supporting the application. In that context, in my view the Council have acted in an appropriate manner and considered a number of potential revisions to the scheme in a timely manner.
9. Whilst I have reached a different view to that of the Council regarding the acceptability of the development proposed, summarising my reasoning above, the Council's actions in respect of proposed were based on detailed observations of the appeal site, relevant provisions of the development plan, in line with the principles set out in relevant elements of the NPPF and PPG referenced above. In that context the position arrived at by the Council is based on sound observations and planning judgement rather than substantive shortcomings. With regard to the approach in the PPG, it has not therefore not been demonstrated that unreasonable behaviour resulting in unnecessary or wasted expenses occurred.

Conclusion

10. Having taken account of all other matters raised, I therefore conclude that no action or inaction taken by the Council in this instance amounts to unreasonable behaviour resulting in unnecessary expense. An award of costs is therefore not justified.

Thomas Bristow
INSPECTOR

⁶ Paragraphs 38 and 39.

⁷ Prepared by Arboricultural Consultant Ian Murat dated 9 September 2019 replacing an earlier version of 18 December 2018, prepared by Mode Transport Planning dated September 2019, and prepared by TNR Architects dated 26 February 2019 respectively.