
Costs Decisions

Site visit made on 12 February 2020

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th April 2020

Application A: Costs application in relation to Appeal Ref:

APP/N4720/W/19/3241341

Tetley Hall, Burton Crescent, Headingley, Leeds LS6 4DN

- 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 Miles Pickard, Pickard Properties Limited for a full award of costs against Leeds City Council.
 - The appeal was against the refusal of planning permission for the redevelopment of former halls of residence site comprising 4 storey residential care home, 3 blocks of 54 flats, 2 blocks of 14 townhouses, conversion of stables to detached house, with landscaping and public open space without complying with a condition attached to planning permission Ref: 11/03234/FU, dated 2 August 2012.
-

Application B: Costs application in relation to Appeal Ref:

APP/N4720/W/19/3241342

Tetley Hall, Burton Crescent, Headingley, Leeds LS6 4DN

- 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 Miles Pickard, Pickard Properties Limited for a full award of costs against Leeds City Council.
 - The appeal was against the refusal of planning permission for the demolition of Tetley Hall building and Heathfield Cottage (11-13 Heathfield Terrace) and construction of 17 apartments (block K).
-

Decisions

1. Application A for an award of costs is refused and Application B for an award of costs is refused.

Procedural Matter

2. The Council has also submitted costs claims which concern both these applications. For the purposes of clarity, they are the subject of separate decisions.

Reasons

3. 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.

Application A

4. The applicant (the appellant) has cited a lack of engagement by the Council, including with regard to the principle of the application made under Section 73 of the Town and Country Planning Act 1990 (Act); whether the proposal would preserve or enhance the character or appearance of the conservation area; and, the accessibility of dwellings, amongst other matters.
5. A considerable amount of correspondence between the applicant and the Council has been brought to my attention during the course of the appeal. This does not amount to an insignificant level of engagement, even where this relates to matters that are in dispute. Moreover, it seems to me that the Council simply reached the point where it considered that further engagement and negotiation would have been unlikely to overcome its concerns, in reaching a decision on the planning application. Whether or not there is agreement with the Council's position is a different matter. This does not constitute unreasonable behaviour.
6. The applicant has rightly pointed out that at the time of the Council's decision, the *Finney* judgment¹, which forms the basis of my appeal decision on application A, had not been issued. Prior to *Finney*, the line of authority on the consideration of amendments to an existing permission came from the *Arrowcroft* judgment². This provided for a consideration of whether the amendments would amount to a 'fundamental change'. This, in itself, requires a judgment by the decision maker.
7. The Council considered that the proposed mechanism for the delivery of affordable housing was such a change, and placed significant weight on the affordable housing provision that formed part of the original planning permission³. The applicant took a different stance, on the basis of recent development plan policy. Neither position, including that of the Council, is without adequate evidence or explanation, and so it is not unreasonable.
8. The applicant also contends that the Council made vague, generalised and inaccurate assertions about whether the development would preserve or enhance the character or appearance of the conservation area. The Council's appeal statement is, though, precise in terms of where it considers the harm would occur. This includes the proportions of buildings, fenestration, composition and detailing. The assessment is informed by The Far Headingley Conservation Area Appraisal & Management Plan (2008). These are not vague, generalised and inaccurate assertions.
9. The same applies as regards the car parking provision. There would be a slight shortfall against adopted guidance, as the applicant has acknowledged. The Council's approach is, therefore, precise and not without evidence. None of this amounts to unreasonable behaviour.
10. The applicant has also stated that the Council has not been consistent in its decision making because the changes to Blocks H1/H2 had already been approved previously⁴. The Council has, though, also factored in the effects

¹ John Leslie Finney v Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868

² R v Coventry City Council ex parte Arrowcroft Group Plc [2001]

³ Council ref: 11/03234/FU

⁴ Council ref: 18/00381/FUL

which would arise from Block I, which did not feature in this previous approval. Hence, its approach, overall, is not unreasonable.

11. I do have some sympathy with the applicant as regards the Council's lack of engagement with the preparation of the Section 106 Agreement during the appeal. Even where there are outstanding matters of dispute, it is usual practice for the main parties during the appeal to work together to agree such a document, in the event that the Inspector was minded to allow the appeal. The resource costs to the Council are not determinative in this regard. This amounts to unreasonable behaviour.
12. However, for a costs order to be awarded unnecessary or wasted expense in the appeal process also needs to have been demonstrated. The applicant would still have accrued such costs because the preparation of the Section 106 Agreement would have been required, if the appeal was to be allowed. Accordingly, this does not constitute unnecessary or wasted expense. I have dealt with matters relating to development plan policy concerning affordable housing above and why the Council placed greater weight on material considerations in its planning judgment.

Application B

13. My views as regards the Section 106 Agreement are the same as I have set out for Application A.
14. Concerning the proposed car parking provision, the Council are not bound to follow the advice of the Highway Authority Officer so long as a case can be made for a contrary view. As I have set out in the appeal decision, there would be a shortfall against the standards that the Council would usually apply. Those standards do permit a consideration of local circumstances and the site is in a highly accessible location as regards local services. In rebuttal, the Council has pointed to parking pressures in the area.
15. The purpose of the Council's appeal statement is to amplify the matters which are set out in the reasons for refusal and this is satisfactorily achieved concerning the proposed car parking provision. There is detailed evidence contained in the relevant section of the statement which sets out why the Council considered that insufficient provision was proposed. Whilst I do not agree with the Council's view on this matter, its contentions are not made without evidence.

Other Matters

16. The handling of the application that has been made to the Council for a Non-Material Amendment under Section 96A of the Act 1990 (NMA) lies outside of what can be reasonably considered under the costs claim. Whilst the PPG permits behaviour and actions at the time of the planning application to be taken into account, this is not so broad so as to include an NMA that has been submitted after the appeal has been made, in my view.
17. The Council's appeal statement and the planning officer report raise housing mix and living conditions considerations, even though these are not contained in the reasons for refusal. I am not, though, persuaded these are central to the Council's case and nor has the Council suggested they would be, on their own, decisive. The evidence that I have received from both parties on these matters is of a limited nature and would not justify a costs claim.

18. In respect of the inclusion of parking to the front of Block K and the impact of car parking on trees, these are relevant as regards whether the development would preserve or enhance the character or appearance of the conservation area. As such, these would have to have been considered under the relevant statutory duty. As both main parties had not picked up until the appeal that some of the car parking spaces would fall outside of the red line boundary, albeit within the broader site that the applicant is developing, it would not be reasonable to solely penalise the Council on these grounds.

Conclusion

19. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in relation to Application A or Application B. An award of costs is not, therefore, justified.

Darren Hendley

INSPECTOR