
Costs Decision

Site visit made on 7 February 2020

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 April 2020

Costs application in relation to Appeal Ref: APP/H4505/W/19/3237603 Former Monkridge Gardens Residents Association and Lands at 21 and 23 and land south of 9- 23 Monkridge Gardens

- 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 Alan Kain on behalf of Co-Kain Developments Ltd for a full award of costs against Gateshead Council.
 - The appeal was against the refusal of Outline planning permission with all matters reserved for the clearance, lowering & levelling of site and the erection of up to 10 dwelling-houses, with new shared-surface, new vehicular & pedestrian access, and the demolition of Number 23 & formation of new blank supporting gable wall to Number 25.
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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 appeals process.
3. The Applicant's claim is based on the assertion that the Council has not acted reasonably when refusing permission, given that the planning officers recommended approval; what he sees as unsubstantiated reasons for refusal; and a failure to take into account that the demolition of a property, required to gain access to the site for which outline planning permission was sought, could take place under permitted development rights.
4. The PPG is clear that costs cannot be claimed for expenses incurred as part of the determination of a planning application. However, actions at the time of the planning application can be taken into account if the applicant has proceeded to make an appeal.
5. The local planning authority may be at risk of an award of costs where it has been found to have prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and other material considerations¹. In this case the Council's reasons for refusal were not supported by an objective analysis of the application before it.

¹ Planning Practice Guidance Paragraph:049 Reference ID: 16-049-20140306

6. I do not find the decision of the Council's Planning Committee to refuse the application contrary to the advice of its officer to be unreasonable, as the Committee was entitled to reach a decision based on its own view of the merits of the application. However, it did not base its decision on sound planning reasons. The concern in relation to what it saw as an adverse effect on the visual appearance of the area was based solely on the proposal to remove the property at no 23 Monkridge Gardens.
7. The Council's view is that the removal of one half of the semi-detached property and the creation of a blank gable wall creates sufficient justification for a conclusion that the proposal would be contrary to both national and local planning policies relating to the quality of development and the effect it would have on the character and appearance of the area.
8. However, it has taken no account of the possibility that those works could proceed under the prior approval process in the Town and Country Planning (General Permitted Development) (England) Order 2015. Had it done so at the time it decided the application it should have reached a different conclusion and granted outline permission, since the demolition could take place irrespective of a decision over the outline planning application.
9. The PPG also advises that basing the refusal of an application on vague or generalised assertions on the impact of a proposal could also be an indication of unreasonable behaviour².
10. The Council's reason for refusal referred only to 'unacceptable visual impact' without expanding on the reasons why it considered that a brick gable wall would be out of keeping with the area. Whilst the Council has during the appeal sought to amplify its reasons, including by providing a photo montage, its stated reason for refusal does not accord with the PPG advice on the need for exactitude in such matters.
11. The Council has responded to the claim. It contends that the matters forming the subject of the claim amount to no more than a difference in professional opinion. Were the case to turn on little more than a judgement over the visual appearance of the site following the proposed demolition, that might be a reasonable point. However, it relates to wider issues of the merits of bringing forward a disused brownfield site for development, and the prevention of that for reasons which, due to the permitted development position, had very little prospect of success if the matter was taken to appeal.
12. Due to the Council's actions, the appellant has been left with little option but to pursue the appeal and has incurred the costs of engaging his professional advisor to undertake work associated with that. The Framework is clear that small and medium sized sites can make an important contribution to meeting housing requirements, and the Council has potentially delayed the bringing forward of such development without good reasons.

Conclusion

13. I therefore find 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.

² Ibid

Costs Order

14. 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 the Gateshead Council shall pay to Mr Alan Kain on behalf of Co-Kain Developments Ltd, the full 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.
15. The applicant is now invited to submit to the Gateshead 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Tim Wheeler

INSPECTOR