
Costs Decision

Site visit made on 28 January 2020

by R Norman BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2020

Costs application in relation to Appeal Ref: APP/P3040/W/19/3238073 Land on Wilford Lane, West Bridgford, Nottinghamshire NG2 7QZ

- 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 Wilford Lane Developments Limited for a full award of costs against Rushcliffe Borough Council.
 - The appeal was against the refusal of planning permission for a hybrid application comprising full planning permission for construction of retail units (Class A1), café / restaurant (Class A3) and drinking establishment (Class A4), along with associated highway works including new access off Wilford Lane, servicing, landscaping and boundary treatments, and outline planning permission (with all matters reserved except for access) for residential uses (Class C3).
-

Decision

1. The application for costs is partly allowed, in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, 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 applicant's case relies on the fact that they consider that the Council failed to act reasonably in terms of applying the planning balance in respect of the loss of the Lime tree, a failure to substantiate or provide evidence in terms of the impact on nearby living conditions and the lack of evidence to justify the reason for refusal on highways grounds.
4. The PPG sets out a number of examples where a local planning authority are at risk of an award of costs. These include preventing or delaying development which should clearly be permitted having regard to the development plan, national policy and any other material planning considerations, the failure to produce evidence to substantiate each reason for refusal and vague, generalised or inaccurate assertions about the impact of a proposal which are unsupported by any objective analysis.

Loss of the Tree

5. Whilst the Officer's report indicated support for the development despite the loss of the tree, Members of the Planning Committee came to a different conclusion. Member are entitled to not accept the professional advice of

Officers however if a different decision is reached the Council has to clearly demonstrate why the proposal is unacceptable. In relation to this matter, the landscape contribution of the tree to the surrounding area is a matter of judgement and is to a degree subjective. The Council have not disputed the findings or categorisation of the tree however have placed greater weight on the visual contribution it makes to the area.

6. Notwithstanding my conclusions on this matter in the appeal, I find that there is no basis for concluding that the Council have acted unreasonably in relation to this matter and I consider the reasons put forward within their appeal statement adequately support the Members views in respect of the loss of the tree. Accordingly, in respect of the first reason for refusal I find that unreasonable behaviour has not been demonstrated.

Living Conditions

7. In relation to the second reason for refusal, the Council considered that the submission did not adequately demonstrate that the quantum of residential development could be accommodated on the site without adversely impacting on the living conditions of nearby residents on Bede Ling.
8. In this case, the matters before the Council related to access alone. All other matters were reserved for determination at a later date. Whilst Members are not duty bound to follow the advice of its professional officers, in this instance the Committee report made it clear that access only was committed at this stage. It is not unusual for a scheme to identify how the number of units could be accommodated however the matters relating to the final layout, scale and appearance would be determined through the submission of a further application relating directly to those reserved matters.
9. Consequently, I find that concerns over the scale, appearance and layout which were largely made on the basis of plans only to be used for illustrative purposes leads me to conclude that the Council has not substantiated its reason for refusal on this matter with any clear evidence.

Highway Matters

10. Despite the information provided by Officers, Members of the Planning Committee were not satisfied that it had been adequately demonstrated that the cumulative impact of the traffic generated by the development could be accommodated without detrimental impacts on the highway network.
11. I note from the Council's submission and the information provided, that the Council engaged with the Appellant in a proactive manner to discuss and address the initial highway comments. The Council Officers provided detailed information to the Planning Committee however, whilst it is not uncommon for Members to conclude differently in some cases, in this instance the Appellant had carried out and provided a substantial amount of work and information to support their proposal and to ensure the impacts to the highway network are acceptable. Based on the information before me, limited technical evidence has been provided to support the view of the Council in their reason for refusal on these grounds. Consequently, in respect of this matter, I find that the Council have failed to substantiate and provide evidence to support this reason for refusal.

12. In conclusion, whilst I find that the Council have not acted unreasonably in respect of the reason for refusal relating to the loss of the Lime Tree, in this instance, for the above reasons I conclude that the Council have failed to substantiate their reasons for refusal in relation to the highway grounds and the impact of the proposed residential development. As a result, this has led to the applicant having to incur unnecessary and wasted expense in relation to these matters only. Therefore, a partial award of costs is justified.

Costs Order

13. 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 Rushcliffe Borough Council shall pay to Wilford Lane Developments Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the second and third reasons for refusal only; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Rushcliffe Borough 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.

R Norman

INSPECTOR