



Costs Decision

Site visit made on 1 June 2020

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2020

**Costs application in relation to Appeal Ref: APP/J4525/W/19/3241160
Rowlandson House, 1-2 Rowlandson Terrace, Hendon, Sunderland
SR2 7SU**

- 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 Anthony Lang for a full award of costs against Sunderland City Council.
 - The appeal was against the refusal of planning permission for change of use of existing residential care home (Use Class C2) to Use Class D1 (as a children's day nursery).
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Decision

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

Reasons

2. The Planning Practice Guidance 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.
3. The appellant submits that the Council has behaved unreasonably on a number of grounds.
4. First, he considers that the proposed development is acceptable and should clearly be permitted. However, I have dismissed the appeal and so cannot agree that the Council has behaved unreasonably in that regard.
5. The second and third grounds relate to whether the tests in the National Planning Policy Framework and Planning Practice Guidance have been applied, including evidence with regards to 'significant adverse impacts'. However, I have concluded that there is a realistic possibility that the proposal would lead to significant harm in respect of living conditions and that the Council's concerns on this matter are well-founded. It is clear that the Council appropriately considered the evidence available to it as part of reaching a balanced decision and that this is not based on vague, generalised or inaccurate assertions. Indeed, it is the appellants own evidence in respect of noise from the rear yard which I have found to be inadequate. Due to the substantive nature of the concerns in respect of noise, disturbance and parking and the limitations of the evidence provided by the appellant, I am not persuaded that these matters could have been addressed through the use of planning conditions.

6. Fourth, with regards to transport issues, he considers that the Council has not taken account of the National Planning Policy Framework and the matter of 'severe cumulative impact'. However, this element of the Council's reasons for refusal related to the effect on the living conditions of nearby residents due to inconsiderate parking, rather than highway safety or impacts on the road network. Due to the circumstances of the site and the area, I consider that the Council's consideration of this matter is appropriate.
7. Fifth, he considers that the Council has not given appropriate weight to the fall-back position of the existing use of the property as a care home. However, a children's nursery raises materially different issues compared to use as a care home, including in relation to noise, disturbance and car parking. The existing use as a care home does not therefore carry substantial weight in favour of the appeal and on that basis the Council has not behaved unreasonably in its consideration of this proposal.
8. Sixth, he submits that the Planning Committee ignored the Planning Unit report and other relevant evidence. However, Council Members are not bound to follow the advice of Officers, and from the evidence before me Members made their decision after a full discussion of the proposal and following a site visit. Indeed, I have agreed with the Members on the matter of harm to living conditions in my appeal decision. Whilst I have concluded that there is no harm in respect of Children's amenity, this is based on evidence which has emerged following the Council's decision, particularly the reconfiguration of the rear yard. I am satisfied that Members gave full and appropriate consideration of the evidence available to them before reaching their decision, and whilst I have disagreed with Members in respect of children's amenity this does not amount to unreasonable behaviour on behalf of the Council.
9. Seventh, that it is unreasonable to conclude that a children's nursery is incompatible with family homes in a residential area. However, a nursery is a more intense form of use than a typical residential property and may lead to greater impact on issues including living conditions. As can be seen from my appeal decision, I have agreed with the Council's concerns on this matter.
10. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is not justified.

David Cross

INSPECTOR