



Costs Decision

Site visit made on 21 July 2020

by K Ford MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date:

Costs application in relation to Appeal Ref: APP/Q4625/W/20/3248401 83 Lawnswood Avenue, Shirley, Solihull B90 3QW

- 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 Chudasama for a full award of costs against Solihull Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for an outline application to include access for the part demolition of No 83 and erection of up to 5 dormer bungalows on land to the rear of Nos 83, 81 and 79 Lawnswood Avenue.
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Decision

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

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 appeal process.
3. The PPG identifies that 'local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal'. This includes 'preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other material considerations' and 'failure to produce evidence to substantiate each reason for refusal on appeal'.
4. Notwithstanding my decision on the planning appeal, the Council clearly identified their reasons for refusal in the decision notice along with the parts of the relevant policies that it considered the proposal conflicted with. They therefore explained why they thought the decision was justified.
5. The applicant says that a scheme on the site was previously refused on a single reason and identify that 2 additional reasons were added to the latest application with no justification. I do not know the full details of the previous scheme but each case is considered on its own merits. It was not therefore unreasonable for the Council to impose additional reasons if they were valid.
6. With regards to the first reason for refusal, the Highways Authority withdrew original objection to the scheme following the appellant's submission of a revised access layout. The Council used the revised layout in their determination of the scheme. I note the evidence from local residents on the

matter. However, this alone does not demonstrate how the proposal would cause significant harm to highway safety as a result of the proposed access. Overall, the Council's evidence is based on vague and generalised assertions with no objective analysis. The Council failed to produce evidence to substantiate its reason for refusal on this matter. It was contrary to the advice from its professional officers and the Highways Authority that the proposal was acceptable in this regard. This constitutes unreasonable behaviour.

7. In the second reason for refusal the Council took the view that the scheme fell outside what was deemed acceptable in terms of access to services and facilities. This was done with reference to travel distances and a view on whether this constituted compliance with the policy. I disagree with the conclusions of the Council. Nevertheless, they did substantiate their reasons and therefore did not act unreasonably.
8. The third reason centred on matters of character and appearance which are subjective. Again, I disagree with the Council on this matter although they did substantiate their reasons with reference to policy and therefore did not act unreasonably.
9. In both the second and third reasons for refusal the Council went against officer advice. The Council is not bound to accept the recommendations of their officers. Whilst the Council case officer recommended approval of the planning application, they were not the ultimate decision maker as recommendations are not binding upon the Council until the point at which a formal decision is made. It does not necessarily follow that a Council officer recommendation would be the ultimate decision of the Council.
10. With regards to highways matters the Council acted unreasonably. However, there were a further 2 reasons for refusal in which the Council did not act unreasonably and therefore an appeal was necessary. As a result, whilst I find the Council acted unreasonably, this did not result in the applicant incurring any wasted or unnecessary expense.

Conclusion

11. I therefore find that whilst unreasonable behaviour on the part of the Council has been demonstrated, this did not result in unnecessary expense during the appeal process. Accordingly, an award of costs is not justified.

K Ford

INSPECTOR