
Costs Decision

Site visit made on 18 August 2020

by A Blicq BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 20 August 2020

Costs application in relation to Appeal Ref: APP/W3710/W/20/3250748 63 - 65 Regent Street, Nuneaton, Warwickshire CV11 4BL

- 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 B Carroll for a full award of costs against Nuneaton and Bedworth Council.
 - The appeal was against the refusal of the Council to grant planning permission for the erection of a pair of semi-detached dwellings (including alterations to flat 63a).
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Decision

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

Reasons

2. Paragraph 030¹ of the *National Planning Practice Guidance* (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 051² of the PPG states that awards against appellants may be either procedural in regard to behaviour in relation to completing the appeal process or substantive, which relates to the planning merits of the appeal.
4. The applicant advances the arguments that the Council has erred in describing the appeal site as garden land, that the pre-application advice appeared to weigh in favour of the application, and that the officer did not have the plans when the decision to refuse the application was made. It is also argued that highway concerns were considered in a previous appeal and found to be acceptable. Finally, the applicant advances the argument that the Council failed to consider the applicant's arguments in relation to housing supply.
5. The National Planning Policy Framework (the Framework) defines previously developed land as land which is or was occupied by a permanent structure including the curtilage of that developed land. It excludes land in built up areas such as gardens. The evidence before me indicates that although the host building currently has mixed use, the terrace was built as a dwelling with a rear garden. The vacant land to the rear of No 63 is not previously developed land.
6. The pre-application advice makes comments and raises concerns against three options, concluding that Option 2 would be preferable, but not necessarily

¹ Reference ID: 16-030-20140306

² Reference ID: 16-051-20140306

- acceptable. The sentence relating to the precedent of existing backland development finishes by saying that *nonetheless I have some concerns regarding separation distances*. This suggests that the presence of the workshops did not necessarily create a precedent. Moreover, even where pre-application is given it cannot be guaranteed that an application will be given permission. The advice letter states that the giving of that advice does not prejudice the right of the Council to come to a different conclusion with regard to a formal application. This does not constitute unreasonable behaviour.
7. With regard to the plans, an email exchange appears to show that the officers had mislaid a set of proposed plans during consideration of the application. I am unable to discern whether the officer had reviewed them or not before setting out concerns in relation to the development's impact on the character of the area. In any case, it remains that the Council refused permission. The reasoning given was sufficient to enable me to discern the reasons for refusal.
 8. I have also concluded in my decision that the concerns of the highway authority in relation to parking stress carry some weight. This was not considered in the previous appeal. The Council is entitled to reference concerns raised by interested parties as they see fit. I see no reason to conclude that this amounts to unreasonable behaviour.
 9. The Local Plan was adopted in June 2019 and the Council's decision is dated 15 October 2019. Although it is argued by the applicant that the Council failed to follow advice in Planning Practice Guidance and the Framework, the Local Plan Inspector concluded that the Council's figures and forecasting accord with *recognised practice and applies reasonable assumptions*.
 10. I acknowledge that at examination the figures were historic. However, at adoption, and before the Council's decision, the figures were updated to reflect the latest national guidance regarding delivery. The latest housing delivery test³ figures indicate that housing delivery, at 98 per cent, is well above what is required by the Framework. If the site allocations were flawed in the period leading up to the examination of the Local Plan, it is reasonable to presume that this would be reflected in the latest housing delivery figures. Yet this is not the case.
 11. In my decision I was unable to conclude that the Council's inclusion of specific sites in their allocations was significantly flawed. I conclude that at the time of determination of the application, the Council had sufficient housing land supply. Consequently, the Council did not need to apply the tilted balance as set in Paragraph 11d).
 12. I find that unreasonable behaviour resulting in wasted expense has not been demonstrated. The application for an award of costs is refused.

A Blīcq

INSPECTOR

³ MHCLG February 2020