
Costs Decision

Site visit made on 8 September 2020

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th September 2020

Costs application in relation to Appeal Ref: APP/J3015/D/20/3255088 1A Trevor Road, Beeston NG9 1GR

- 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 Ryan Foster for a full award of costs against Broxtowe Borough Council.
 - The appeal was against the refusal of planning permission to construct a single storey rear extension, a two storey rear and side extension and a raised deck.
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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 applicant's costs claim is based on the grounds that the Council prevented development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other material considerations; failed to produce evidence to substantiate each reason for refusal on appeal; made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; acted contrary to, or not following, well-established case law; and did not determine similar cases in a consistent manner.
4. The Council's decision was taken against officer recommendation. A planning decision is one of a matter of judgment and the Council Members are entitled not to accept the professional advice of their officers so long as a case can be made for a contrary view. This is such a situation, in particular with relation to the potential effects from the proposal on the living conditions of 1 Trevor Road (No 1) due to its height and proximity, and the difference in levels. Whilst I disagree with the Council's decision, it is not without merit.
5. The reason for refusal also includes the policies of the development plan¹ that are of direct relevance to the appeal as they concern matters that relate to the consideration of the effects of the proposal on living conditions.

¹ Policy 10 of the Greater Nottingham Aligned Core Strategies Part 1 Local Plan (2014) and Policy 17 of the Council's Part 2 Local Plan 2018-2028 (2019)

6. There is also not the opportunity for a Council to provide evidence to substantiate its decision on appeal under the Householder Appeals Service written representation procedure, which this appeal has followed. Hence, the Council is not permitted to produce a written statement or similar to detail its concerns at appeal.
7. The reason for refusal itself sufficiently explains on what grounds the Council considered the proposal not to be acceptable. Whilst it does not specifically name the affected properties, it does make reference to the north east boundary, which is shared with No 1. The Council minute is also consistent with the reason. As such, it does not amount to a vague, generalised or inaccurate assertion about a proposal's impact, which are unsupported by any objective analysis. The Council's approach, overall, fulfils the relevant statutory requirements².
8. With regard to the National Planning Policy Framework's approach to engagement and the role of local planning authorities in working with applicants, as well as the dialogue with the Planning Officer, the applicant was afforded the opportunity to address the Planning Committee. This does not seem an unreasonable approach, even if the Council Members ultimately took a different view based on the planning merits of the proposal.
9. The case law³ that the applicant refers to concerns 'fallback'. There seems no dispute that the Council Members were aware of the permitted development rights that were available because the applicant made them aware of it at the Planning Committee. I am not, therefore, persuaded that they took no account of it.
10. In terms of consistency, the applicant has referred to a further decision that the Council Members took against officer recommendation where the potential reasons for refusal were summarised by the officers. How this would have led to the Council making a different decision on the appeal proposal is not evident. Nor did it concern a householder development, based on the information before me, and so it is not obviously a similar case.
11. I also note the applicant's views about how the Council made its decision. However, it is the prerogative of the decision maker to attribute weight to such considerations as they see fit and for the reasons that I have set out above, it does not amount to unreasonable behaviour. Matters in relation to the probity and the conduct of the Council Members, and associated publications that have been cited, are not for me to comment on, beyond what I can have regard to under the PPG and which is the basis for considering claims for costs.
12. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is not therefore justified.

Darren Hendley

INSPECTOR

² Article 35 of the Town and Country Planning (Development Management Procedure)(England) Order 2015

³ *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314