



Costs Decision

Site visit made on 4 August 2020

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2020

Costs application in relation to Appeal Ref: APP/R0660/W/20/3249398 Hillside, 21 Adlington Road, Wilmslow SK9 2BJ

- 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 Mirasa Wilmslow Ltd for a full award of costs against Cheshire East Council.
 - The appeal was against the refusal of the Council to grant planning permission for the demolition of the existing nursing home and the construction of a new building providing 11 apartments, car parking, landscaping and associated facilities.
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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. Paragraph 049 of the PPG states that examples of unreasonable behaviour by local planning authorities include failure to provide evidence to substantiate its reasons for refusal on appeal, or making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The applicant essentially relies on the fact that, having refused to grant planning permission against the recommendation of the case officer, the Council behaved unreasonably in that its reasons for refusal were not supported by acceptable and defensible justifications. There are three specific elements to the claim.
5. Firstly, in respect of the effect on living conditions for occupiers of Blackcomb and Cherry Lawns, that the Council's assessment of the impact of the proposed development was inaccurate. Secondly, that the overdevelopment and over-intensification in the second reason for refusal were not supported at all by the Council's evidence. Finally, that there was insufficient detail provided to explain the third reason for refusal in respect of the character of the area.
6. The applicant has also referred to the failure, in their view, of the members of the Council's Planning Committee to take heed of their officers' advice on the need to provide clear and justifiable reasons for refusal.

7. It is obviously extremely frustrating for the applicant that their proposal was refused planning permission by the planning committee against the recommendation of the Council's officers, although Councillors are of course entitled to disagree with their professional officers. I note the original reports and recommendation of the Council's officers, but as a matter of principle the members of the committee were entitled not to accept this recommendation so long as a case could be made for the contrary view. Concerns with the detailed committee proceedings are not a matter for my deliberations but would need to be taken up with the Council.
8. For reasons set out in my main decision, on the balance of evidence before me I found that the proposed development would be acceptable in terms of its effects both on neighbours' living conditions and on the character and appearance of the area. However, that I reached a different conclusion to the Council on these matters is not in itself an indication that their reasons for refusal were unsubstantiated. In respect of the relationship and separation between the proposed development and the neighbouring dwellings of Blackcomb and Cherry Lawns and their gardens, I consider that the points put forward by the Council were not inaccurate or unsupported. However, in respect of Cherry Lawn I consider that the Council's interpretation that 'the submitted plans do show the [proposed apartment block] to be slightly closer' was perhaps selectively drawn based on the northern part of the proposed block being closer than the northern part of the existing building, which was not an argument which I accepted in my main decision. The Council's justifications for finding the proposal would represent overdevelopment of the appeal site and that it would be at odds with the character of the area were substantiated in their appeal statement, albeit briefly and, again, in terms which I did not ultimately find persuasive.
9. The only part of the Council's reasons for refusal which in my view was unsubstantiated or unsupported by evidence was the claim that the proposal would represent over-intensification of the site. Like the applicant I took it to refer to the combination of the scale of physical development, which in any event was addressed separately, and the impact of activity arising from the proposed change of use of the site on its character and that of the surrounding area. However, the Council's view of the type and scale of the harm which they considered would arise from 'over-intensification' was not expanded on at all in the Council's statement. In this limited regard, I therefore consider that the Council acted unreasonably in the terms set out in the PPG. However, in order to make an award of costs I need to be satisfied that this resulted in unnecessary or wasted expense.
10. The other elements of the Council's reasons for refusal were substantiated and, even had the Council not alighted on the phrase 'over-intensification' it seems unlikely that they would have reached a different decision, though of course I cannot be certain of this. On this basis, it seems likely that the application would still have been refused and the appeal would have gone ahead in any event. Although the applicant has referred to the 'wasted money of pursuing an unnecessary appeal', addressing the 'over-intensification' element of the reasons for refusal occupied a five-and-a-half-line paragraph within the applicant's appeal statement of 28 pages, not including appendices. The Council's other concerns about the impact of the development were reasonable, and the applicant would in any case have been likely to appoint a consultant to fight the appeal.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

M Cryan

Inspector