



Costs Decision

Site visit made on 14 July 2020

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd December 2020

Costs application in relation to Appeal Ref: APP/C2741/W/19/3239424 2 St Aubyn's Place, York YO24 1EQ

- 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 The Handa Family for a partial award of costs against City of York Council.
 - The appeal was against the refusal of planning permission for a development described as: Replacement of existing dwelling with new 4 bedroom dwelling.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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 application for an award of costs is made only in respect of Reason for Refusal number 2 cited on the decision notice issued by the Council. No procedural grounds for an award of costs have been put forward and the application is essentially predicated on the substantive grounds that there is no policy basis for the reason for refusal; the Council applied the requirements of the National Planning Policy Framework (the Framework) incorrectly; and did not provide sufficient evidence at the appeal to substantiate the reason for refusal.
4. The Council accept that there is no specific local plan policy that required the appellant to demonstrate that the existing building could not be re-used. Although the reason for refusal references Paragraph 8 of the Framework, Paragraph 9 of the Framework makes it clear that the overarching objectives set out in Paragraph 8 are not criteria against which decisions can, or should be, judged. I have found that the Framework does not offer support for the reason for refusal in the terms that are cited. Although the Council has referenced an emerging local plan policy in its appeal statement, the Council also accepts that this policy is not listed in the Reason for Refusal and at this time has little weight.
5. I have been provided with correspondence relating to a previously refused scheme on the site and the pre-application discussions relating to the appeal proposal. I have seen that in this the Council had suggested that consideration should be given to retaining the existing dwelling. However, there are no

references to a requirement to demonstrate as part of the proposals that the existing dwelling cannot be re-used, nor did this form part of the reason for refusal of the previous application.

6. In this context, the reason for refusal, particularly the reference to it not being demonstrated that existing dwelling could not be re-used rather than demolished, is not founded on any local or national planning policy and no other factors have been adduced that would justify the reason for refusal.
7. Whilst the Council is not duty bound to follow the advice of its professional officers, if a different conclusion is reached the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. In respect of the Council's second reason for refusal I have found that this is not the case. As such, the Council's behaviour was unreasonable.
8. The inclusion of this second reason for refusal resulted in the appellant having to produce additional evidence as part of the appeal submissions in order to address this reason for refusal, which will have incurred additional and unnecessary expense.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified

Costs Order

In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the City of York Council shall pay to the Handa Family, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in preparing evidence to address the second reason for refusal cited on the decision notice issued by the Council; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to the City of York Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

John Dowsett

INSPECTOR