



Costs Decision

Site visit made on 8 July 2020

by S Thomas BSc (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2021

Costs application in relation to Appeal Ref: APP/Z0116/W/19/3243778 Casa Mia, Bramble Lane, Sneyd Park Bristol BS9 1RD

- 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 TMP Developments for a full award of costs against Bristol City Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for demolition of existing dwelling (Casa Mia) and erection of four detached dwellings with associated garages, refuse storage, internal access road and landscaping (resubmission of application 17/07096/F).
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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. Unreasonable behaviour can either be procedural, relating to the process of an appeal or substantive, relating to the merits of any issues arising from an appeal.
3. The applicant believes the Council has acted unreasonably in substantive terms on three grounds. They state the Council provided guidance on a layout and quantum of development to follow which the Council subsequently found unacceptable, advised the applicant that private refuse collection was acceptable in principle and then subsequently not accepting it could be secured via a legal agreement and finally have not determined cases in a similar manner.
4. The applicant refers to a sketch layout undertaken by the City Design Group in a previous meeting between the parties prior to the submission of the planning application. This shows an arrangement of 4 dwellings following a similar pattern to that proposed in the appeal scheme and is termed suggested layout. However, there is clear dispute between the parties regarding the status of this sketch. Whilst the applicant considers this to provide clear advice as to an acceptable scheme to follow, the Council is adamant that this was used to merely illustrate a particular point regarding linear development and that this was not an agreement that a scheme of 4 dwellings would be acceptable. The

Council state this was only given to the applicant on request as they did not intend to pass this sketch on.

5. Therefore, whilst having some sympathy with the applicant's position, in the absence of any written advice from the Council to substantiate the applicant's view, I cannot conclude this constituted formal advice from the Council that a similar scheme of 4 dwellings would be supported. Furthermore, having reviewed the officers report for the previous scheme¹, this does not lead me to conclude the principle of 4 dwellings at the site was previously found acceptable.
6. Following consultation on the planning application, the Council set out its initial concerns in an email to the applicant on the 5th March 2019 in advance of the statutory determination date. The Council raised concerns as to the whether the site could comfortably accommodate 4 dwellings on the scale proposed and suggested a reduction to 3 dwellings or dwellings of a smaller scale. These concerns were raised again following a review of subsequent changes to the scheme in an email dated 10th October 2019. On the evidence before me, there is no formal pre application advice that states such an approach in terms of layout and quantum of development would be supported and the Council raised concerns with such an approach in the initial review of the planning application and in subsequent comments. Consequently, I cannot conclude that the Council have acted unreasonably in this regard.
7. The Council's highway team initially advised that private waste collection could be acceptable in principle subject to full details of the waste management plan being agreed. Following the submission by the applicant of a proposal document for the private collection of waste this did not satisfy the Council that this was a firm proposal nor that it could be secured in perpetuity. The Council considered the scheme to be unacceptable to be served by its own waste collection services. Therefore, the need to ensure they were satisfied a suitable alternative arrangement could be demonstrated by the applicant, which would not result in the Council becoming responsible for collection arrangements in the future is not an unreasonable position to take.
8. The applicant indicated² they would submit a legal agreement which would secure a management company and private collection arrangements and suggested the use of a Highways Adoption Exemption Notice (HAEN). This would remove the possibility for future adoption of the access road in the future. Whilst the officer report raised doubts as to whether a legal agreement would be an appropriate mechanism, a Unilateral Undertaking dated 20 May 2020 to secure this was only submitted during the appeal process. There is no submitted signed HAEN and the parties are in dispute over whether such an approach could be suitably conditioned. Consequently, the approach to secure private waste collection was not before the Council prior to the appeal being made and therefore they could not have taken account of it previously.
9. Consequently, whilst I acknowledge the frustration of the applicant, I have found that unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated.

¹ 17/07096/F

² Email 8 March 2019

Conclusion

10. Given the above, I do not consider the appeal could have been avoided and no unnecessary or wasted expense was consequently incurred. For this reason and having regard to all other matters raised, an award of costs is therefore not justified.

S Thomas

INSPECTOR