



Costs Decision

Site visit made on 23 March 2021

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 31 March 2021

Costs application in relation to Appeal Ref: APP/Z0116/W/20/3262242 Land on the north east side of Baynton Road (Unit A and B), Bedminster, Bristol BS3 2EB

- 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 Adam Phelps of Crown Developments Ltd for a partial award of costs against Bristol City Council.
 - The appeal was against the refusal of planning permission for the erection of a three storey building containing 7no. residential flats, and associated works.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an 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. The applicant submits that the Council acted unreasonably on a number of procedural and substantive grounds.
3. In terms of the procedural grounds put forward, the Council failed to provide copies of all of the third party comments it received on the application within its appeal submissions. The applicant submitted the missing letter from Avison Young with his statement of case. The Council accepts that this was an error and I find this behaviour to be unreasonable.
4. The applicant submits that the Council did not provide a sufficient list of relevant policies within its appeal submissions. The applicant was free to refer to other policies and documents within his submissions, however I do not take the view that it was unreasonable of the Council to only provide copies of those policies it referred to in its refusal reasons and which it considered relevant to the appeal.
5. The Council did not submit a list of suggested conditions in the event that the appeal is allowed. The suggestion of conditions by the Council is not essential. I therefore find that the Council did not behave unreasonably in respect of this issue. Although helpful, the applicant was not required to submit a set of suggested conditions.
6. The Council accepts that it was late in submitting its completed appeal questionnaire. Although the delay was only a few days, the delay in providing

- information or other failure to adhere to deadlines is specifically referred to in the PPG as unreasonable behaviour of a procedural nature.
7. In terms of substantive grounds put forward, the applicant submits that the Council incorrectly conveyed public opinion by failing to take into account all of the public comments it received. This matter relates directly to the Council's consideration of the proposal and is not directly related to the appeal process.
 8. The applicant submits that the Council failed to give appropriate weight to its relevant supplementary planning documents. Whilst Urban Living SPD was not specifically referred to by the Council in its officer report, I am satisfied that the relevant matters of density, living conditions and daylight were considered adequately by the Council. The Council did refer to Supplementary Planning Document 2 a Guide for Designing House Alterations and Extensions, which it acknowledged was not directly relevant to the proposal, however I am satisfied that distances referred to were relevant considerations, and the guidance was not referred to in isolation. Therefore, I do not consider that the Council behaved unreasonably in respect of this issue.
 9. There is no evidence within the Council's officer report to demonstrate that it weighed the positive benefits of housing delivery against the harm it identified, taking into account housing need in its area. I find that the Council's objective analysis of individual main issues is compromised by its failure to carry out an overall balance that takes into account the positive benefits of the proposal, including housing delivery.
 10. The applicant submits that the Council's reference to the proposal's cramped appearance is not substantiated, that it linked issues that are mutually exclusive and that references to the acceptability of the height of the proposal were contradictory within its officer report and contrary to agreement reached with Council staff. However, I find that the officer report demonstrates that these matters were adequately and objectively considered. Therefore, I find that the Council did not behave unreasonably in this respect.
 11. The applicant submits that the Council stated that the submitted Daylight and Sunlight Assessment (DSA) concluded that there would be significant overshadowing of properties on Ashton Road. However, this is not a conclusion reached by this document. Whilst the report concludes that there would be some adverse impacts, nowhere does it suggest that these impacts would be significant. I therefore find the Council has behaved unreasonably in respect of this matter, by making an inaccurate assertion about the proposal's impact.
 12. With reference to the 25 degree rule, the Council inaccurately applied this rule to the ground floor window to the rear of No. 7 Ashton Road when it said that the proposal would intersect the 25 degree line. This window is set much further back than the windows at the rear of No. 8. The rear ground floor windows of No. 8 would not be intersected by the proposal to the extent suggested by the Council. The Council's position in respect of this matter is therefore inaccurate and constitutes unreasonable behaviour.
 13. In relation to the fourth refusal reason the applicant submits that the Council failed to demonstrate consistency in its decision making by not taking into account similar urban schemes with comparable neighbour impacts. Whilst most of the examples provided are materially different in some respects, and each proposal must be assessed on its own merits, distances referred to

between facing windows of separate dwellings would appear to be directly comparable to the relationship between the proposal and No. 31 Baynton Road. No comparison is made between the Council's acceptance of such distances at other schemes, and its objection to this aspect of the appeal proposal. Furthermore, the Council did not respond to this matter during the appeal process as it did not provide a statement of case. I therefore find that the Council acted unreasonably in respect of this issue.

14. In summary, in terms of procedural issues I have found that the Council acted unreasonably by failing to provide copies of all third party correspondence at appeal, and submitting its questionnaire late. In terms of substantive issues I have found that the Council acted unreasonably by failing to properly balance the benefits of the scheme, by inaccurately referring to the DSA and the 25 degree rule, and by failing to demonstrate consistency in its decision making.
15. I also need to address whether these unreasonable behaviours have resulted in unnecessary or wasted expense on the part of the applicant. There is no evidence before me to suggest that the late submission of the Council's questionnaire incurred wasted or unnecessary expense on the part of the applicant. However, I am satisfied that the applicant has spent considerable time and effort addressing the other matters. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

16. 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 Bristol City Council shall pay to Mr Adam Phelps of Crown Developments Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred by providing a copy of missing third party correspondence, responding to the Council's failure to properly balance the harm against the benefits of the scheme, addressing the Council's inaccurate references to the DSA and the 25 degree rule, and by demonstrating its lack of consistency in decision making; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to Bristol City 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.

Andrew Tucker

INSPECTOR