
Costs Decision

Site visit made on 27 April 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 June 2021

Costs application in relation to Appeal Ref: APP/N4720/W/20/3262448 Clarence Road, Horsforth, Leeds LS18 4LB

- 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 Mandale Homes for a full award of costs against Leeds City Council.
 - The appeal was against the refusal of planning permission for development that was originally described as the 'relocation of plot 9 bin and cycle store area (retrospective)'.
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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 grounds for the claim is based on the view that with regard to the PPG, the Council has failed to produce evidence to substantiate its reason for refusal and that the Council has made vague, generalised or inaccurate assertions about the proposal's impact, which is unsupported by any objective analysis.
4. The planning application was refused due to the effect on the living conditions of the occupiers of neighbouring properties. This was due to matters related to noise, disturbance and smell. The Council did not seek the views of the Environmental Health Officer (EHO), but point to a lack of related technical evidence on these issues. As such, making an assessment on such effects was dependant on the judgement of the Planning Officer. In these circumstances, this was not an unreasonable position, in particular as it was the Planning Officer who had to provide the delegated recommendation that was the basis of the Council's decision.
5. A number of matters of planning judgement are cited in support of the claim, including whether bin and cycle stores are often located close to a boundary, and the effects from both the occasional nature of the trips to the bin store and the projection above the shared boundary wall. These are dependent on the nature of the proposal and the particular site circumstances. In these respects, the Council's appeal statement satisfactorily amplifies its concerns because it refers to the proximity of the development to the neighbouring properties,

- especially with the domestic use of their rear gardens. Hence, the Council's position is not one without substance.
6. The applicant also refers to the Council not considering the potential usage of the parking area for the storage of bins. I am not persuaded this amounts to unreasonable behaviour because this area has a different function for the same occupiers that would benefit from the bin and cycle store. Whether the closed and locked form of the bin store would effectively reduce potential odours is not the subject of technical supporting evidence, and so it would not be reasonable to penalise the Council in this respect.
 7. In relation to the failure of the Council to consider the fence on the boundary with the neighbour, the Council refer to Covid-19 pandemic restrictions that were in place at the time of the application that impacted on whether site visits could be carried out. This is an understandable position given these circumstances and the Council has set out adequate evidence in other respects, as I have explained above, to justify its position. The Council's Appeal Statement does in any event refer to the fence.
 8. Taking these factors together, the Council has not failed to produce evidence to substantiate the reason for refusal and nor has it made vague, generalised or inaccurate assertions about the proposal's impact, which is unsupported by any objective analysis.
 9. The applicant has also referred to preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. The effect on living conditions is a matter which is underpinned by policy, and the Council has referred to the relevant development plan policies in its reason for refusal. Hence, this does not amount to unreasonable behaviour. The application of those policies simply follows from the Council's view on the matter of dispute.
 10. I clearly agree with the applicant on the planning merits, as is set out in my appeal decision. However, a costs claim is not decided on such grounds. This is a case where a contrary view can be made, as the Council has satisfactorily set out in its submissions. Accordingly, it has not acted unreasonably and so I do not have cause to consider whether unnecessary or wasted expense has resulted.
 11. I therefore find 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