
Costs Decision

Site visit made on 11 May 2021

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 June 2021

Costs application in relation to Appeal Ref: APP/J4423/W/21/3266383 Land at Rear of 17-31 Tetney Road, Sheffield S10 3GZ

- 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 Mrs May for an award of costs against Sheffield City Council.
 - The appeal was against the refusal of planning permission described as: erection of 6 No. townhouses.
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Decision

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

Procedural Matter

2. Although the appellant does not state whether they are applying for a partial or full award of costs, my understanding derived from the costs application and appeal documents is that a full award of costs is sought. Notwithstanding, I have also considered whether a partial award would be justified.

Reasons

3. Irrespective of the outcome of an appeal, the National Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may be procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).
4. In summary, the applicant considers an award of costs is justified for the following reasons:
 - The Council did not provide a Statement of Case in the appeal to defend its decision.
 - Since the determination of planning application Ref 18/01297/FUL the Council has granted permission for the erection of 4 No. dwellings on the appeal site, application Ref 20/03202/FUL. The separation distances between the proposed dwellings and properties on Tetney Road are less than the separation distances in the appeal scheme; and it is considered that the massing of the approved scheme is similar to that of the refused scheme.
 - It is contended that there is an intervening hedge which would act as a screen, to prevent overlooking and any overbearing relationship.

- It is asserted that the 'Landscape Note', dated August 2020, demonstrates that it is potentially feasible to retain the existing conifers on the southern boundary, after reducing their height to between 4–5 m; or, as an alternative, an "instant" hedge, up to 5 m high, could be planted following the removal of the existing trees.
 - It is therefore asserted that the conditions in the approved scheme are the same as those of the appeal scheme.
 - The appellant is of the opinion that the Council acted unreasonably in refusing the application, considering that it has prevented development which should have been approved. Additionally, the appellant considers that the Council has not substantiated its reasons for refusal.
5. Notwithstanding my conclusion regarding the appeal, as I noted in the appeal Decision, the 'Landscape Note' was submitted with the appeal, after the planning application had been determined, and therefore it was information the Council did not have at the time it made its decision.
 6. The Council was entitled to make a judgement regarding whether it considered the trees could be retained or alternative suitable planting could be provided, to protect the living conditions of occupiers of existing properties. Its judgement, without the benefit of the 'Landscape Note', was that it couldn't.
 7. Furthermore, the Council considers the appeal scheme differs significantly to the scheme it subsequently approved, due mainly to differences in the orientation of the proposed dwellings and massing. Again, given that there are significant differences between the 2 schemes, the Council was entitled to reach different conclusions on each proposal.
 8. Finally, as noted by the Council, a Statement of Case was not submitted with the appeal as it considered the Officer Report adequately addressed the issues. I consider the Officer Report provided adequate reasoning for the conclusions reached. I also note that there is no obligation on the Council to submit a Statement.
 9. I therefore conclude that the Council did not behave unreasonably in refusing the application; the Council was, and is, of the opinion that the proposed development should not be permitted. Although I reached a different conclusion on the appeal, I conclude that the Council's behaviour was not unreasonable behaviour which delayed development which has been permitted on appeal.
 10. I therefore conclude that it has not been demonstrated that the Council behaved unreasonably in respect of procedural or substantive matters associated with the determination of application Ref 18/01297/FUL. Consequently, there has not been any unreasonable behaviour which caused the applicant to incur unnecessary or wasted expense in the appeal process, as described in the PPG. Therefore, an award of costs is not justified.

J Williamson

INSPECTOR