



Costs Decision

Site visit made on 25 May 2021

by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2021.

Costs application in relation to Appeal Ref: APP/B1930/W/20/3261064 61-65 St Peters Street, St Albans, AL1 3EA

- 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 Alasdair McInnes (Gatsby Retail Ltd) for a partial award of costs against St Albans City and District Council.
 - The appeal was against the refusal of planning permission for demolition of existing buildings to provide three retail units (class A1) at ground floor level and twenty residential dwellings above, with associated access, landscaping and other related works
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Decision

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

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 appeal followed the refusal on 17 June 2020 of an application made on 6 December 2019 for demolition of existing buildings to provide three retail units (class A1) at ground floor level and twenty residential dwellings above, with associated access, landscaping and other related works. There were four reasons for refusal but this costs application is based only upon the second and third refusal reasons. These related to the character and appearance of the Conservation Area and street scene in terms of height and resulting scale, bulk and mass and whether the proposal could be appropriately serviced in terms of refuse and recycling collection. As can be seen from my Appeal Decision, I disagree with the Council's assessment and have allowed the appeal.
4. The PPG makes it clear that a Local Planning Authority (LPA) is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact with are unsupported by any objective analysis.
5. In relation to refusal reason 2 the appellant considers that the Council did not have due regard to the factual information presented to it regarding visibility of the proposed building within long and short range views. Whilst I have disagreed with the Council's assessment relating to this refusal reason I find the Council had taken the information presented into account. The Council specifically make reference to the Heritage, Townscape and Visual Impact Assessment within their report and specifically discuss the skyline, short,

medium and long range views alongside reference to numbered views/viewpoints submitted by the appellant. The scale of buildings in the vicinity were noted, as submitted by the appellant, with the Council concluding that based upon the site history of sites in the vicinity the harm to the CA was not, in their view, of the same manner. The information was, I find, referenced within the Council's analysis in relation to this reason for refusal.

6. Whilst both the appellant and Council of course came to differing views as to visual impact and dominance of the proposal I have no evidence before me to suggest that the Council did not take the factual information presented into account or have due regard for it within their assessment of the proposal.
7. In relation to refusal reason 3, regardless of the timing the appellant was made aware of the Council's objection to the proposed residential refuse and re-cycling strategy, it is evident from the submissions before me that at least two potential solutions were available which would likely have overcome this refusal reason. One of which was suggested by the Council themselves. There was realistic prospect of a solution being available to overcome the concerns raised at a later stage and I find this could be appropriately agreed, and secured, as a condition regardless of the scale of the scheme as claimed by the Council. This would have avoided the appellant having to address this refusal reason at appeal stage.
8. In failing to produce relevant evidence at appeal to support all of their reasons to refuse planning permission, I consider that the Council has acted unreasonably resulting in unnecessary expense for the appellant with specific regard to the third refusal reason. 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

9. 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 St Albans City and District Council shall pay to Gatsby Retail Ltd the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to issues relating to whether or not the proposal can be appropriately serviced in terms of refuse and recycling collection; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to St Albans City and District 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.

Eleni Randle

INSPECTOR