



Costs Decision

Site visit made on 6 July 2021

by James Blackwell LLB (Hons)

an Inspector appointed by the Secretary of State

Decision date: 12 August 2021

Costs application in relation to Appeal Ref: APP/P0119/W/21/3273845 58 Northville Road, Filton, BS7 0RG

- 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 Andrews Capital Ltd for a full award of costs against South Gloucestershire Council.
 - The appeal was against a refusal of planning permission for the erection of a single storey rear extension, a rear roof extension and the change of use from residential dwelling (C3) to a large house in multiple occupation for up to 8 people (sui generis) (resubmission of planning application P20/22196/F).
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Decision

1. The application for an 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. It goes on to state that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example by making vague or generalised assertions about a proposal's impact, by failing to provide evidence to substantiate reasons for refusal, or by preventing or delaying development which should clearly be permitted having regard to the development plan, national policy and other material considerations.
3. The application to which the associated appeal relates followed submission of a previous application for a similar development at the appeal property (P20/22196/F) (Previous Application). The Previous Application sought permission for the same physical development as well as a change of use to a seven-person house in multiple occupation (HMO), as opposed to an eight-person HMO. Whilst the Council's Officer had recommended approval of the Previous Application, the recommendation for approval was not agreed at committee. Much like the appeal to which this costs decision relates, the Council's reasons for refusal related to the effect of the development on the character of the area and on highway safety.
4. Whilst I accept that the earlier committee resolution would have been a material consideration in the Council's determination of the current scheme, this should not be at the expense of properly considering the planning merits of the application as a whole. In this instance, the Council placed undue weight on this earlier committee resolution. That is particularly problematic as this earlier

- resolution appears to have been based on vague, generalised and unsubstantiated views as detailed subsequently.
5. Specifically, under the Previous Application officers had advised Members that just 4% of the properties along Northville Road were licensed HMOs. That evidence was also before me in the appeal to which this costs decision relates. Members indicated that there were many more HMOs within Filton than this figure would suggest. However, such views were not based on any tangible evidence and were therefore unsubstantiated. Similarly, even if there was a higher concentration of HMOs across Filton, there was no evidence before them to suggest that this higher figure was directly attributable to properties along Northville Road (the surrounding context to the appeal site).
 6. In terms of highway safety, the traffic and parking data submitted by the applicant was endorsed by the Council's highways team. Albeit being drawn from data taken at particular points in time, it established that there was sufficient on-street capacity to accommodate the level of parking required to support the proposed development. Nonetheless, Members drew on their own knowledge of the site to suggest this data may not be typical, but again without any substantive evidence in that respect.
 7. I fully appreciate Members are not bound by officer recommendation and they may have first-hand knowledge and experience of a site which can be material to the determination of an application. However, where this is case, such knowledge must be corroborated by tangible evidence, rather than assertions which are generalised, vague or unsubstantiated. This was not the case here. That finding is consistent with the Inspector who previously determined an appeal and associated costs decision in respect of 58 Northville Road.¹ Effectively, having refused application Ref. P20/22196/F on inadequate grounds, the Council compounded that issue by taking a similar course of action in respect of application Ref P21/00833/F (the subject of the associated appeal).
 8. It is of course rational to deal with similar applications similarly, and therefore the Council's reference to the approach taken in the Previous Application in determining application Ref P21/00833/F is understandable. However the logical corollary of that is that if the approach taken in the Previous Application was flawed, as it was found to be by a previous Inspector, that is similarly the case of the Council's approach in respect of P21/00833/F. Whilst there are slight differences between the two schemes, nevertheless much of the information is common to both (as set out in the associated appeal decision).
 9. Moreover, in light of the previous Inspector's appeal decision referred to above, the Council no longer maintained its objection to the scheme proposed via application Ref P21/00833/F. That reinforces my point immediately above. Whilst I have some sympathy for the Council, in seeking to 'do the right thing' by withdrawing their objection to the scheme, the PPG does say that 'withdrawal of any reason for refusal' can amount to unreasonable behaviour that may result in an award of costs.
 10. For these reasons, I consider that the Council's reliance on the approach in the Previous Application and the lack of substantiation for its objection to the

¹ Related to planning appeal Ref. APP/P0119/W/21/3267761.

scheme proposed via application Ref P21/00833/F have led to a flawed decision. In the absence of robust justification for the Council's position, I therefore find that the Council unreasonably withheld permission in conflict with the approach in the PPG. Whilst I acknowledge the Council did engage quickly and proactively in the context of appeal Ref APP/P0119/W/21/3272845 to acknowledge the outcome of the earlier appeal and to withdraw their objection, by that time it was effectively 'too late' and wasted expense had already occurred. Therefore, a full award of costs is justified.

Costs Order

11. 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 South Gloucestershire Council shall pay to Andrew Capital Ltd the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to South Gloucestershire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount.

James Blackwell

INSPECTOR