
Costs Decision

Site visit made on 27 July 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th August 2021

Costs application in relation to Appeal Ref: APP/N1025/W/21/3269549 31 Shaftesbury Avenue, Sawley NG10 3FG

- 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 Paul Murfin, P J Developments for a full award of costs against Erewash Borough Council.
 - The appeal was against the refusal of planning permission for the demolition of garage and outbuildings, erection of a single storey dwelling and the creation of a new access; reconfiguration of the existing access and drive to no.31 Shaftesbury Avenue; associated hard landscaping and infrastructure works.
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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 claim is made on substantive grounds. It considers that the Council has been unreasonable under the PPG by way of 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; and a failure to base the decision on any evidence to substantiate the reason for refusal which is based on vague, generalised and inaccurate assertions about the proposal's impact which are unsupported by any objective analysis.
4. A planning decision is one of a matter of judgement and the Council Members are entitled not to accept the professional advice of their officers so long as a case can be made for a contrary view. The Council's decision was based on the effect on the character and appearance of the area, and on the living conditions of the occupiers of 29 Shaftesbury Avenue by way of light. These matters are reflected in the reason for refusal. The development plan policies that are referred to are also of direct relevance, as is Chapter 12 of the National Planning Policy Framework.
5. The purpose of the Council's Appeal Statement (Statement) is to amplify the matters which are set out in the reason for refusal. With regard to character and appearance, the Statement sets out why a cramped form of development

- would occur, including the site arrangement as part of the local character and the resultant effect from the proposed dwelling. I would agree that the Council make limited reference to the previous appeal decision, but that was for a different type of residential development and not a single storey dwelling. Hence, I do not consider this constitutes unreasonable behaviour.
6. In relation to living conditions, the Council has detailed its concerns over the siting of the proposal, its proportions and the effect on the window in question. Whilst I do not agree with the Council on this issue, it has satisfactorily justified its position. In relation to whether it is supported by technical evidence, deciding on this issue is ultimately a matter of judgment. The Council do in any event respond to that evidence in its Statement.
 7. The applicant's claim also details what it considers are a number of shortcomings with how the Council's Planning Committee conducted itself and how this is reflected in the reason for refusal. Whether the purported behaviour should be taken into account in the costs claim is ultimately dependant on the case that the Council has put forward during the appeal. For the reasons that I have set out above, the Council has given sufficient consideration to the merits of the case through its evidence and has justified its position. It is more simply that the main parties reach different positions on the weight to be attached to the matters of dispute.
 8. As a consequence, the wording that the applicant has drawn my attention to in Part 4 of the Decision Notice is not persuasive. Whilst the term 'felt' is used in the context of the Committee's position, it is one that is based on evidence. Matters in relation to access to statutory and neighbour responses during the planning application, and Freedom of Information, are not for my consideration.
 9. Taking these factors together, the Council has not prevented or delayed development which should clearly be permitted, having regard to its accordance with the Development Plan, national policy and any other material considerations. Nor has there been a failure to base the decision on any evidence to substantiate the reason for refusal which is based on vague, generalised and inaccurate assertions about the proposal's impact which are unsupported by any objective analysis.
 10. I have also considered whether a partial award should be made, but I reach the same overall conclusion. The Council has provided sufficient evidence across all the grounds of refusal and so such an award of costs is not justified.
 11. As the Council has not acted unreasonably, I do not have cause to consider whether unnecessary or wasted expense has resulted.
 12. I conclude 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