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## Costs Decision

Site visit made on 22 June 2021

**by Luke Simpson BSc MSc MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 18 August 2021**

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### **Costs application in relation to Appeal Ref: APP/G2625/W/21/3268636 Land Adjacent to 1 Dell Crescent, Norwich NR5 8QB**

- 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 GCP PROJECT 022 LTD for a full award of costs against Norwich City Council.
  - The appeal was against the refusal of planning permission for erection of 8 No. two bedroom flats.
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### **Decision**

1. The application for a full award of costs is allowed.

### **Reasons**

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant submits that the Council acted unreasonably in refusing planning permission for reasons which had already been considered in a previous appeal decision in 2016<sup>1</sup> (the Previous Appeal) on the same site. The previous appeal scheme related to the same quantum of development as proposed under this current appeal and the decision was made within the same development plan context. The proposed access and level of parking provision remain unaltered from the Previous Appeal.
4. The reason for refusal in relation to this current appeal relates to the effect of the proposed development on highway safety and the living conditions of neighbouring occupiers, as a result of the alleged increase in on-street parking and traffic generated by the development. The effect of the proposal on highway and pedestrian safety in Dell Crescent was a main issue in relation to the previous appeal. The Inspector concluded that the proposal would not cause material harm to highway or pedestrian safety. The Inspector also concluded that the development would provide a sufficient level of parking provision.
5. Given that there has been no material change in circumstances since the Previous Appeal decision, the findings of the Inspector should have been material to the decision made by the Council when determining the application.

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<sup>1</sup> APP/G2625/W/15/3006563

6. The minutes in respect of the committee meeting on 10<sup>th</sup> December 2020 show that the Previous Appeal was discussed in detail. Indeed, Planning Officers advised that a refusal on the grounds of highway safety would be inconsistent with the conclusions reached by the Inspector in relation to the Previous Appeal. The minutes state in part that the Planning Officer advised Members of the committee as follows:

*'It had been to appeal and he [the Planning Officer] did not agree that there had been any changes to land stability or highways safety, or other reasons, that were defensible. He considered that the increase in on-street parking and consequent loss of residential amenity as a result was a weak reason for refusal and that the situation had not changed materially in the last 4 years.'*

7. It is therefore clear that the Council was aware of the previous appeal decision, the relevance of the conclusions reached by the Inspector and that there had been no material change in circumstances since that appeal decision was made. On this basis alone, the Council acted unreasonably in failing to accept and take into account the conclusions reached by the Inspector in relation to the level of parking provision proposed and the associated impacts upon highway safety. Indeed, the PPG provides specific examples of 'unreasonable' decisions, including: *'persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.'*
8. Both the Council's response to this application for costs and the committee meeting minutes, suggest that the conclusions reached by the Inspector in relation to the Previous Appeal were based on a single site visit and that they did not therefore take into account the existing level of on-street parking during the evening or at night. I do not accept this assertion. I find that the Inspector's previous conclusions are sound and whilst a site visit is a snapshot in time, the site visit is aimed at assisting the Inspector in considering the main issues. Conclusions reached are based on all of the evidence before the Inspector, as opposed to the site visit alone.
9. Similarly, in the case of the current appeal, the Council has not provided any substantive evidence to indicate that there would be any adverse impact on highway safety or upon the living conditions of neighbouring occupiers, at any time of day. No objective evidence has been provided to support the reason for refusal and it is noted that there were no objections from the Highway Authority. Furthermore, the evidence before me indicates that the level of parking provision proposed would comply with Norwich Development Management Policies Local Plan Policy DM31 and Appendix 3, which set out the relevant parking standards. The Council's case does not suggest that there is any conflict with these policies.
10. With regard to the alleged impact upon living conditions, the Council has not substantiated this element of the reason for refusal other than the vague assertion that there will inevitably be an increase in on-street parking. The Council has therefore also acted unreasonably in failing to substantiate their reason for refusal. Indeed, the PPG states that unreasonable behaviour includes 'vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis'. Whilst I accept that the Council have provided sufficient information with regard to existing on-street

parking on Dell Crescent, the Council has not demonstrated how the proposed development would exacerbate this situation.

11. I accept that the Planning Committee Members were entitled to come to a different decision to that which was recommended by Planning Officers. However, in this case, the evidence before the Council demonstrated that the issues raised had been previously addressed by a Planning Inspector, that the level of parking provision was policy compliant and that there had been no objection from the Highway Authority.
12. Having regard to the provisions of the development plan, national planning policy and other relevant considerations, including the Previous Appeal decision, the development proposed should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour, contrary to the basic guidance in the National Planning Policy Framework and the PPG. The appellant has been faced with the unnecessary expense of preparing for and lodging the appeal.

### **Conclusion**

13. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

### **Costs Order**

14. 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 the Norwich City Council shall pay to GCP PROJECT 022 LTD, the costs of the appeal proceedings described in the heading of this decision.
15. The applicant is now invited to submit to Norwich City 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.

*Luke Simpson*

INSPECTOR