



Costs Decision

Site Visit made on 7 September 2021

by John Gunn DipTP, DipDBE, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2021

**Costs application in relation to Appeal Ref: APP/P4605/W/21/3276827
45 Victoria Road, Sutton Trinity, Sutton Coldfield B72 1SY**

- 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 Northern Developments Ltd. for a full award of costs against Birmingham City Council.
 - The appeal was against the refusal of planning permission for Demolition of the existing dwellinghouse and erection of a new building containing up to 6 apartments with under croft car parking, widening of the existing access and associated works.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that irrespective of the outcome of an appeal, costs may only 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 Applicants contend that the appeal is only necessary because the development should have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Moreover, they contend that the authority has not determined similar cases in a consistent manner and has refused planning permission on planning grounds which are capable of being dealt with by conditions. In the applicants' view the above represents unreasonable behaviour which has led to unnecessary delay and expense in pursuing the appeal.
4. Whilst I found differently to the Council with regard to the loss of the existing four bedroom dwelling and insofar as this matter is concerned, I reasoned that an appropriately worded condition would ensure the delivery of the family housing that the Council desire in line with local policy.
5. However, I am satisfied that the Council substantiated its concerns in respect of this matter, making reference to the relevant policy of the development plan and the Strategic Housing Market Assessment 2013 and housing completions data up until 2019. Given that the proposal was in outline, and the description of the development in terms of providing 'up to six dwellings' it does not automatically follow that the development should be clearly have been

- permitted. Moreover, housing mix was not the only matter in respect of which the Council objected to the scheme.
6. The second reason for refusal relates to the impact of the proposed development on the established character of the area. In this regard I find that the Council has been consistent in expressing their concern regarding the quantum of development that would result from the proposal, both at pre-application stage and during consideration of the application. Moreover, they have sought to engage with the applicant to resolve their concerns.
 7. I acknowledge that reserved matters provide an opportunity to consider detailed issues such as appearance, landscaping, layout and scale. However, in this instance I find that the introduction of a new form of housing development, of the type and quantum proposed, into an established residential area raises legitimate issues relating to the principle of the development as well as detailed matters. Given the evidence before it, including the illustrative schemes submitted, I am satisfied that the Council has provided evidence to support their concern, referring to the relevant policy of the development plan, and the guidance within the Places for Living SPG and the Mature Suburbs SPD. On the basis of the evidence before me and the likely effect of the proposal on established character, I similarly reached a view that the proposal would likely appear incongruous and discordant.
 8. The evidence provided by the applicant refers to two decisions for similar developments in which the Council were involved, amongst other cases. The first at 69 Church Road, Moseley was the subject of an enforcement appeal where they sought to prevent the conversion of a family dwelling into flats. With regards to this case, although the Inspector disagreed with their position, I find that Council sought to apply development plan policy in a consistent manner.
 9. In the second case, which relates to 278 Birmingham Road, Wylde Green, no reference was made in the officers report to the loss of family housing stock (Policy TP35). The applicant accepts that this was either an oversight or a professional judgement, concluding that the provision of 5 additional generously sized apartments would contribute to the housing stock within the city. Given this situation, and my reasoning in respect of the first issue in the associated appeal, I am unable to conclude that the Council have been inconsistent in the application of policy.
 10. I accept that there is a provision via the Town and Country Planning (Development Management Procedure) (England) Order 2015 to request further details regarding an outline scheme, and that the Council did not elect to do so. However, inherent in my reasoning above, is that the Council reached a balanced view on the merits of the scheme based on sufficient information to reach an informed decision. As I have reasoned similarly in terms of character and appearance, there is no indication that any further details (if so requested) would definitively have resolved matters related to character and appearance, given the inevitable additional intensity of development proposed.
 11. Given my findings above I conclude that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated.

Decision

12. I have considered all the submitted evidence and conclude that the application for an award of costs should be refused.

J Gunn

INSPECTOR