
Costs Decision

Site visit made on 18 May 2021

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2021

Costs application in relation to Appeal Ref: APP/D1780/W/21/3267076 279 Northumberland Road, Southampton SO14 0EL

- 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 I Bajar for a partial award of costs against Southampton City Council.
 - The appeal was against the refusal of planning permission for erection of a 4-storey building to contain 8 flats (6 x 1-bed and 2 x studio) with associated cycle/refuse storage, following demolition of existing building.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Guidance advises that parties who pursue an appeal unreasonably without sound grounds for appeal, may have an award of costs made against them. It confirms that awards against local planning authorities may be either substantive, relating to the planning merits of the appeal, or procedural, having regard to behaviour in relation to completing the appeal process.
4. Paragraph 047 of the Guidance states that examples of unreasonable behaviour by local planning authorities which may give rise to a procedural award of costs include the withdrawal of any reason for refusal and the introduction of a new reason for refusal. Paragraph 049 of the Guidance states that examples of unreasonable behaviour by local planning authorities which may give rise to a substantive award of costs include the failure to provide evidence to substantiate each reason for refusal on appeal and refusing planning permission on a planning ground capable of being dealt with by conditions.
5. The applicant's view is that the Council has withdrawn its first reason for refusal in respect of noise and vibration impacts within the proposed new flats due to inadequate evidence, and has introduced a new noise issue at appeal stage in respect of the impact of noise on the proposed external amenity areas, which the applicant considers has not been supported by evidence and is capable of being dealt with by a planning condition. As such, the applicant is

seeking a partial award of costs on procedural and substantive grounds in respect of the first reason for refusal.

6. The Council's first reason for refusal relates to insufficient supporting information submitted with the planning application to demonstrate that there would be no harmful impacts associated with vibration, or that the proposed external balconies would be useable in terms of the external noise environment.
7. I find that the Council were entitled to include these matters within their reasons for refusal, having regard to advice in the Guidance to ensure any conflicts between new development and existing businesses are addressed and that if required, appropriate mitigation measures are put in place to avoid any adverse impacts upon new development arising from existing businesses within the vicinity, which in this instance include the railway and neighbouring commercial uses.
8. The Guidance advises that the agent of change will need to identify clearly the mitigation being proposed to address any potential significant adverse effects that are identified. As such, the Council would need to be satisfied that this has been satisfactorily addressed by the applicant, and the failure of the applicant to provide sufficient information is enough to justify the Council's first reason for refusal. Furthermore, vibration impacts and noise impacts on external amenity areas had previously been identified as issues through the planning history of the site.
9. The applicant submitted the Groundborne Vibration Impact Assessment Report dated September 2020 (GVIAR), included within the appeal documents, to the Council after the refusal of the planning application, as such, it was not available to the Council prior to the decision being made. I have been provided with correspondence between the applicant and the Council which shows that constructive dialogue in respect of this issue took place between both parties prior to the appeal submission. This resulted in the Council, at appeal stage, confirming that this aspect of the first refusal reason had been satisfactorily addressed by the applicant and would no longer be contended by the Council. This constitutes reasonable behaviour and is justified on the basis of the additional information provided by the applicant subsequent to the refusal of permission.
10. Notwithstanding the comments of the Council's Environmental Health Officer, which the Planning Officer is not bound to, the LPA's concerns about the noise levels associated with the proposed external amenity areas were clearly set out in the Delegated Report, having regard to the World Health Organisation's *Guidelines for Community Noise*, advice contained within the Guidance, and the previous site planning history and appeal decisions. The GVIAR did not specifically address these concerns and the Council's appeal statement confirmed that this element of the refusal reason was still of concern.
11. Subsequently, at final comments stage of the appeal submissions, the applicant specifically addressed this matter by means of "*assessment of noise impact on balcony*" by the applicant's noise consultant dated 30 April 2021. In response, upon considering this information, the Council confirmed that, subject to a condition in respect of balcony screening, this issue has now been satisfactorily addressed. As such, I do not find that the Council has acted unreasonably in respect of this matter.

12. Having regard to the noise survey and mitigation measures submitted by the applicant as part of the planning application, no objection on the basis of impact on the internal noise environment of the development was included within the first reason for refusal, and this is confirmed in the Officer Delegated Report. As such, the Council consistently did not object to the proposal on this ground, and have not therefore acted unreasonably in this respect.
13. For the above reasons, I do not find that that applicant was put to unnecessary or wasted expense in providing additional information to address the Council's concerns in respect of the first reason for refusal.

Conclusion

14. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

S Leonard

INSPECTOR