



Costs Decision

Site visit made on 10 September 2021

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2021

Costs application in relation to Appeal Ref: APP/G2815/W/21/3274415 4 Higham Road, Rushden NN10 6DZ

- 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 Michael Phillips for a full award of costs against East Northamptonshire Council.
 - The appeal was against a refusal to grant planning permission for creation of 34 flats and 3 dwellings, demolition of some buildings on the site and change of use of the majority of the site from retail to residential.
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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. The PPG provides 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 unreasonably refusing planning applications, or by unreasonably defending appeals.
3. The PPG gives examples of the type of behaviour that may give rise to a substantive award of costs. These include where a local planning authority has prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations; where there has been a failure to produce evidence to substantiate each reason for refusal; where vague, generalised or inaccurate assertions have been made about a proposal's impact, which are unsupported by any objective analysis or where planning permission has been refused on a planning ground capable of being dealt with by conditions.
4. The applicant contends that the Council disregarded the technical expertise of the Local Highway Authority (LHA), its own independent viability professional and the professional views of its conservation and planning officers in refusing the planning application.
5. My attention has been drawn to Paragraph 111 of the National Planning Policy Framework (the Framework) and specifically that planning permission should only be refused on highway grounds if the residual cumulative impacts of the development are severe. The applicant also contests that the Council had no regard to Policy T1 of the Rushden Neighbourhood Plan. However, providing a sufficient level of usable parking spaces is not necessarily a highway safety matter and was required in this instance to ensure that the development would

functions well and not cause inconvenience for other road users in the locality. I have reached a different conclusion to the Council on this particular issue. Even so, having regard to the guidance in the Northamptonshire County Council Parking Standards (2016), the Council was entitled to reach its own conclusions based on the specific merits of the case and the evidence before it. Even if it had reached a different conclusion, this would not have overcome the Council's other concerns.

6. The Framework confirms that the weight to be given to a viability assessment is a matter for the decision maker. Even though the viability assessment was independently verified, this does not automatically mean that permission should be granted without any contributions towards affordable housing or infrastructure provision, particularly if this in itself would be likely to result in planning harm. Based on the evidence before me and given my own conclusions on this particular matter, I do not consider that the Council's concerns in this regard were unfounded.
7. Matters relating to the effect of a proposal on the significance of a non-designated heritage asset and the character and appearance of an area are subjective matters. In this regard, whilst I have identified the proposal would result in harm at a lower level to that identified by the Council, even then the cumulative harm taking into account all other matters is such that planning permission should not be granted. Therefore, I am not persuaded that had the Council identified moderate harm within its decision, as per the advice of its Conservation Officer, that this would have resulted in a different outcome.
8. I agree that the reason for refusal relating to the privacy of future occupiers of the development could be dealt with by condition. However, given the Council's other concerns, this would not have enabled the proposed development to go ahead nor would it have meant that an appeal could have been avoided altogether.
9. For the reasons set out, I therefore find that there has not been unreasonable behaviour which has caused unnecessary expense in this instance and the application for costs is refused.

M Russell

INSPECTOR