



Costs Decision

Site visit made on 24 February 2021

by Martin Seaton BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2021

Costs application in relation to Appeal Ref: APP/V2004/W/20/3262285 Land adjacent Purple House, Preston Road, Kingston upon Hull, HU9 5UY

- 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 Mrs Ann Clarkson on behalf of Winner Trading Ltd for a full award of costs against Kingston-upon-Hull City Council.
 - The appeal was against the refusal of planning permission for the erection of 24 dwellings (8 x 3 bed town houses; 8 x 1 bed flats; and 8 x 2 bed flats) and meeting/activity/training rooms including associated parking and landscaping, following demolition of existing single storey structure.
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Decision

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

Reasons

2. The Planning Practice Guidance 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. Whilst the Guidance sets out a series of examples of behaviour whereby either a procedural or substantive award of costs may be justified, neither list is stated to be exhaustive. The application for costs is timely.
3. The applicant contends that the Council has acted unreasonably in its failure to consider the specialist nature of the proposed developer and end user, and as a consequence the implications on the levels of parking required for the development given the submitted evidence of other development with similar characteristics. It is further contended that the Council has failed to substantiate the single reason for refusal, with no evidence produced to justify the Council's conclusion of a significant level of harm, with a reliance placed on vague, generalised and inaccurate assertions about the proposed development and its future occupation.
4. As I have set out in the appeal decision, the report to the planning committee made clear reference to the specialist nature of the accommodation and the implications for the parking requirements premised upon such an occupation. The report also clearly placed before the committee what the implications would be if the development was occupied on a more generic basis as affordable housing, but drew a clear *on balance* conclusion to support the development in accordance with the flexibility afforded by Local Plan Policy 32 over the application of parking standards.

5. I am satisfied that the Council in making its decision would have had a clear understanding and reference to the specialist nature of the proposed accommodation and the justification for the reduced level of parking provision, albeit that a conclusion based on a more generic occupation as affordable housing was reached.
6. In this instance, it is cited that the justification for the Council's conclusion was based on the terms in which the application was identified on the planning application forms, with only limited weight therefore given to the specialist nature of the accommodation. However, as I have concluded in the appeal decision, it should have been evident on a fair reading of the application and all supporting documentation, how the accommodation was intended to be occupied in the future. I am also satisfied that, with reference to the Council's suggestion of the approach of using a condition as a means of securing affordable housing, that this is a matter which could have been addressed and secured in this manner was there any doubt in the Council's mind.
7. However, despite the above and even if the Council's contention that the parking shortfall was just too significant was to be accepted, the Council has not sought to substantiate its reason for refusal by expanding in any detail what the ensuing impacts on highway safety and amenity as a consequence of the additional on-street parking would be. There is no detailed analysis in either respect or an attempt to establish a clear baseline from which to measure and assess the impacts. The results are that rather vague assertions as to the adverse impacts of the development are made from the perspective of both highway safety and amenity, with neither issue addressed with any detailed or compelling evidence, or indeed authority.
8. In this regard, and irrespective of the conclusions over whether the specialist nature of the accommodation was properly considered, I find the Council has failed to substantiate the reason for refusal and has instead relied upon vague and generalised assertion. Therefore, having due regard to all the submissions, I conclude that unreasonable behaviour in accordance with the scope of that described by the Planning Practice Guidance, and resulting in unnecessary or wasted expense, has been demonstrated.

Costs Order

9. 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 Kingston-upon-Hull City Council shall pay to Mrs Ann Clarkson on behalf of Winner Trading Ltd the full costs of the appeal proceedings, such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Kingston-upon-Hull 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.

M Seaton

INSPECTOR