



Costs Decision

Site visit made on 14 January 2022

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2022

Costs application in relation to Appeal Ref: APP/B1930/W/21/3272162 219 Hatfield Road, St Albans, AL1 4SY

- 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 Kevin Luckhurst for a full award of costs against St Albans City & District Council.
 - The appeal was against the refusal of planning permission for the redevelopment and extension of a ground floor retail unit to create a smaller retail unit and a new 1-bedroom dwelling with a separate access.
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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 where:
 - a party has behaved unreasonably; and
 - the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG clarifies that unreasonable behaviour may either be procedural or substantive. Although an application for costs may relate to events before the appeal, the PPG states that costs unrelated to the appeal are not eligible for an award.
4. The application for costs by the appellant is based on substantive grounds in that it alleges the Council acted unreasonably in; - (1) preventing or delaying development that should clearly be permitted; (2) refusing planning permission on a planning ground capable of being dealt with by a condition; and (3) vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. In accordance with section 38(6) of the 2004 Act¹ and section 70(2) of the 1990 Act, applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The starting point of decision-making is therefore plan-led.
6. The PPG states that where a local planning authority has exercised their duty to determine planning applications in a reasonable manner, it should not be liable

¹ Planning and Compulsory Purchase Act 2004

for an award of costs. It also states that where a planning application has been refused for a proposal that is not in accordance with development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application.

7. It will be seen from the accompanying appeal decision that I am satisfied the Council did not prevent or delay development that should clearly be permitted, so the application for costs on this substantive ground fails.
8. I agree with the appellant that a planning condition could have been imposed to reduce the fence in height. However, whilst this would have addressed the Council's concerns relating to outlook from inside the dwelling, it would not have addressed its objections in relation to defensible space and privacy. Although it will be seen from the accompanying appeal decision that I agree with the appellant on the outcome of this main issue, I do not consider it unreasonable of the Council to have maintained its concerns in respect of defensible space and privacy, even if the outlook issue would have been addressed by lowering the fence. As a consequence, I am satisfied that the imposition of a condition would not have fully addressed the Council's main concerns in respect of living conditions and that the application for costs on this substantive ground also fails.
9. Turning to the third ground relating to vague, generalised or inaccurate assertions about a proposal's impact, I am satisfied that the Committee report clearly set out the main issues and site specific circumstances for Members to base their decision upon and that the recommendation was adequately substantiated by officers.
10. I am surprised the appellant considers the Council to have an 'obsession' with bin storage. It will be seen from the accompanying appeal decision that I consider bin storage and waste matters to be fundamental to the consideration of new planning & development, not only in terms of its impact on the character and appearance of an area, and the way that its functions, but also how it is handled and ultimately disposed of in the environment. It should not be left as an afterthought and I am satisfied that the Council was right to prioritise it as it did.
11. I recognise that it would have been more helpful to the appellant if the second reason for refusal had been included in the Committee report. However, Councillors are not obliged to follow the recommendations of officers on the provision that they give sound and justifiable reasons for doing so, which means that it is within their power to formulate additional reasons for refusal if they so wish.
12. The appellant states that the PPG² makes it clear that after an application is validated, if the Council believes it needs more information, it should ask for it immediately. However, this is not the case – this paragraph merely enables the Council to request additional information if it so wishes – there is no obligation for it to do so. This is reinforced by Section 70 of the 1990 Act, which states that where an application is made to a local planning authority, it may grant or refuse planning permission. This legislation does not therefore impose a legal

² Paragraph 060 Reference ID:14-060-20140306, Revision date 06 03 14

duty upon a local planning authority to enter into discussions with an applicant to resolve problems in a 'live' application that would otherwise result in a subsequent refusal of planning permission.

13. This is further reinforced by the PPG³ which states that while it is possible for both the applicant and local planning authority to suggest changes to a 'live' application before it has been determined, it is at the discretion of the latter as to whether to accept such changes or determine whether the proposed changes are so significant as to materially alter the proposal such that a new application should be submitted. The local planning authority is not therefore under any obligation to accept amended plans or information during a 'live' application.
14. In view of the above, I do not agree that the Council made vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis, or that it was required to ask for additional/amended information, and that as a consequence, the application for costs on this substantive grounds also fails.
15. Given my conclusions on the allegation of unreasonable behaviour, the matter of unnecessary or wasted expense does not need to be considered.

Conclusion

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

Robert Fallon

INSPECTOR

³ Paragraph 061, Reference ID: 14-061-20140306, Revision date: 06 03 2014