

Costs Decision

Site visit made on 15 February 2022

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2022

Costs application in relation to Appeal Ref: APP/W2465/W/21/3283279 22A Staveley Road, Leicester LE5 5JT

- 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 Nico Properties Ltd for a full award of costs against Leicester City Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application to construct 8 apartments (Class C3).
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Decision

1. The application for a full award of costs is partly allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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. An application may be made on procedural grounds, relating to the appeal process, or substantive grounds relating to the planning merits of the appeal.
3. The applicant's claim is that the Council, in failing to make a decision on the proposal, has prevented and delayed development that should clearly have been permitted having regard to the development plan, national policy and other material considerations. It is argued that the Council has subsequently failed to substantiate its reasons for refusal at appeal or to acknowledge the substance of the applicant's case. It is added that the Council has failed to take relevant appeal decisions into account, has been inconsistent in its decision-making and exhibited poor conduct through the application process, including 'drip-feeding' of issues and lack of response or engagement by officers.
4. The Council states that it has acted proactively and reasonably over the course of many applications and appeals, and that it is disappointing that the applicant has not addressed its concerns, including the need for sequential and exception tests which formed a reason for refusal on an earlier application.
5. The applicant responds that the timeline of events shows the Council has not been proactive or reasonable in its conduct, that it has refused applications with little to no prior communication, that it states that an acceptable scheme could be achieved on the site but failed to consider additional evidence that would have enabled a favourable decision, and that it ignored the previous appeal decision and unreasonably introduced new grounds of objection.

6. There has been a long planning history relating to the redevelopment of this site. The PPG is clear that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, but that behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
7. In terms of the first main issue of flood risk, the evidence before me indicated that a sequential test was to be undertaken in line with the guidance of the National Planning Policy Framework (the Framework), which the applicant chose not to do. Although flood risk was not part of the previous Inspector's considerations, this does not mean that it was considered acceptable by the Inspector or was not a matter that could form a material consideration in subsequent applications. The Council and Lead Local Flood Authority indicate that flood risk has been repeatedly raised as an issue in previous applications. The importance of addressing flood risk is also clear in the Framework. Therefore, this was not a matter that could be set aside, and I do not regard it as unreasonable for the Council to have persisted with its objections in this regard at appeal. It will be seen from my decision that I have ultimately agreed with the Council on the main issue of flood risk, both in terms of policy-based risk and site-specific risk relating to the access. Therefore, I find no unreasonable behaviour in respect of the first main issue of the appeal.
8. Turning to the second main issue, the Council in its evidence makes brief reference to the aims of the Framework to achieve high quality design, but nowhere does it describe how the perceived lack of quality in the brickwork or parapet would cause material harm either to the building itself or to the wider area. Indeed, the Council makes no assessment whatsoever of the wider effect of the proposal on the character and appearance of the area. Rather, the Council's case highlights exemplar developments in other cities to which it wanted the applicant to have regard. I agree with the applicant that the Council's evidence presents more as the design preferences of the planning officer, rather than an objective assessment of the proposal put to the Council. In this respect, the Council has acted unreasonably by making vague, generalised and inaccurate assertions about the proposal's impact, unsupported by objective analysis. Moreover, it is evident that such minor concerns over detailing could have been satisfactorily addressed by planning condition, and to instead persist with this as an objection is further unreasonable behaviour by the Council.
9. On the third main issue, it is clear that the applicant sought to specifically address the concerns of the previous Inspector and made material changes internally and externally to improve light and outlook to the flats. This was supported by analysis showing the flats would meet the average daylight factor as set out under the BRE guidance. Notwithstanding this, the Council persisted with an argument that analysis of sunlight and daylight following the BRE guidance should be undertaken and without this a full assessment of the impact could not be made. However, the Council makes no acknowledgement of the analysis submitted by the appellant. Whether or not this would demonstrate that the proposal was acceptable is a matter of planning judgment, but in failing to acknowledge it, let alone rebut it with contrary evidence, the Council failed to engage with the applicant's arguments and offered no substantive reasoning to underpin its position at appeal. This amounts to unreasonable behaviour.

10. In terms of the Council's conduct during the application, delays are regrettable, and whilst I recognise the timeline coincides with nationwide disruption caused by the Covid-19 pandemic, the reasons for the delays are not clearly stated by the Council. However, given the outcome of the appeal, these delays did not ultimately prevent development which should have been permitted. I have found the Council's sustained objection in respect of two of the main issues to be unreasonable, but the evidence before me does not clearly indicate that the Council's conduct during the application has otherwise led to additional wasted expense on behalf of the applicant.

Conclusion

11. I conclude that the Council, through the submission of vague, generalised and inaccurate assertions about the proposal's impact, unsupported by objective analysis, has demonstrated unreasonable behaviour, as a result of which the applicants have been put to the wasted expense of contesting the second and third main issues of the appeal.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified, to cover the expense incurred by the applicant in contesting the second and third main issues of the appeal, as set out in my main appeal decision.

Costs Order

13. 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 Leicester City Council shall pay to Nico Properties Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the second and third main issues of the appeal, respectively relating to the design of the building and the standard of accommodation for future occupants; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Leicester 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.

K. Savage

INSPECTOR