



Costs Decision

Site visit made on 17 March 2022

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 April 2022

Costs application in relation to Appeal Ref: APP/X1355/W/22/3291116 Land To The North Of 28 North Terrace, Seaham SR7 7EU

- 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 David Gill for a full award of costs against Durham County Council.
 - The appeal was against the refusal of planning permission for the erection of 1no. 4 storey building comprising of 3no. units (use class E (a)(b)(c) or Sui Generis (drinking establishment)) to ground floor, 1no. unit (use class E(d) to first and second floor and 4no. residential units (C3) ancillary to the commercial units to third floor.
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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.
3. The applicant submits that the proposed development should clearly have been permitted having regard to the development plan and wider material considerations. There was a detailed assessment in the report to Planning Committee and this included a recommendation that planning permission be granted. In the absence of robust planning grounds justifying the decision, the Council have delayed a development which clearly should have been permitted.
4. The matters of overlooking and increased disturbance to nearby occupiers were capable of being dealt with by condition and these were recommended in the Committee Report. It is unreasonable to refuse planning permission on the basis that parking in the area was said to be an issue in considering the proposed location of a Leisure Centre, a materially different form of development. Reason for refusal 3 has not been substantiated and vague, generalised or inaccurate assertions have been made which are unsupported by objective analysis.
5. In response, the Council states that the Planning Committee in their determination of the proposal considered the scheme having regard to the relevant material planning considerations, and regard to the County Durham Local Development Plan documents and concluded that the scheme is contrary to those material considerations for the reasons set out within the Council's case.

6. The Planning Committee were of the opinion that the impacts of the proposal could not be overcome by planning conditions. Reason for refusal 3 was informed by the Planning Committee's local knowledge and having regard to a recent study in the area which identified a number of long-standing parking issues within Seaham. They took the subjective opinion that the scheme to introduce further uses which were likely to generate high volumes of visiting members of the public (gyms, bars and restaurants) would further compound the issues within the area.
7. Whilst I accept that it will have been frustrating to the applicant that the Council Members took a different view to that which was recommended by their Officers, they were entitled to take this course of action and it does not in itself represent unreasonable behaviour. With respect to reason for refusal 1, the Council have clearly set out their concerns as to which specific elements of the proposal would lead to harm to the Conservation Area and for what reasons. The Council has therefore not acted unreasonably with respect to reason for refusal 1.
8. Some, but not all, of the matters raised by the Council in reason for refusal 2 could in principle be addressed by way of a planning condition. However, conditions could not address the concern of the proposal being overbearing and the Council's Statement of Case makes reference to the quantity of windows that would face Nos 1-7 Tempest Road and to a perception of overlooking that would arise. Therefore, it would appear unlikely that the use of obscured glazing would address that concern. Although there are some aspects of reason for refusal 2 that have been less well substantiated by the Council, as a whole they have adequately outlined and defended their position, on matters which are for the most part matters of planning judgement. Accordingly, there is no unreasonable behaviour with respect to reason for refusal 2 either.
9. As stated in my decision letter, the submission that has been made contains only limited evidence relating to parking demand and to the prevailing parking conditions in the surrounding area. Without such substantive evidence and notwithstanding the position of the Highway Authority, in these circumstances it was not unreasonable that Council Members chose to form their own view. In coming to my conclusion in this respect, I note that it is evident that this drew on both their own local knowledge and on the concerns that were widely identified by the many interested persons who made representations on the planning application. Reference to the Leisure Centre was made to demonstrate that parking issues have been identified in Seaham, and the Council's use of their own document to illustrate their concerns is also not unreasonable.

Conclusion

10. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and the application for a full award of costs fails. As I have found that the Council did not act unreasonably on any of the grounds put forward, a partial award of costs is also not justified.

Graham Wraight

INSPECTOR