
Costs Decision

Site visit made on 25 March 2021

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th May 2022

Costs application in relation to Appeal Ref: APP/V2004/W/21/3267811 High Street / Blaides Staithe, Hull HU1 1HA

- 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 Andy Woodcock (RMI Ventures 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 a building for 16 apartments.
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Decision

1. The application for an award of costs is refused.

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.
3. The application for a full award of costs is on the basis that the Council acted unreasonably on substantive grounds in that it refused planning permission on grounds that lack clarity and has failed to substantiate these. In particular, the applicants point to the fact that the planning application scheme was supported by a thorough analysis by the Council's officers who arrived at firm conclusions regarding its effect on the character and appearance of the Old Town Conservation Area (CA) and the setting of listed buildings. Furthermore, the applicants suggest that the Planning Committee gave undue weight to the concerns advanced by third parties, including the Hull Civic Society, rather than making their own objective appraisal, and did not have regard to relevant national planning policies, thereby failing to follow case law.
4. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised, or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis; acting contrary to, or not following, well-established case law; and refusing planning permission on a planning ground capable of being dealt with by conditions.
5. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached it has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. It is not uncommon for this evidence to be prepared by professional officers in the same department and the Council is not

obligated to compare analysis of its professional officers with the concerns outlined by Members of its Committee.

6. Although the reasons contained on the Decision Notice are concise, they are nevertheless, clear and identify the conflict with the development plan. During the appeal process the Council provided a timely and logical explanation, through its Statement of Case (SoC), as to why it considered the proposal to be unacceptable. Moreover, this identifies the areas of concern raised by the Council's Members including, amongst other things, the articulation of the proposed elevations, form of windows, materials of construction and views of the scheme from surroundings areas.
7. Nevertheless, the identification of the extent of the harm that could be caused to designated heritage assets appears to have strayed from the discussion of its Members, as the SoC introduced substantial harm when no such discussion appeared to take place in the Committee Meeting regarding it. Moreover, although Members raised concerns regarding the harm to the CA and listed buildings, they did not go as far as to identify the extent of that harm and the SoC does not adequately explain how this was arrived at. This therefore represents a vague assertion of the proposal's impact which is unsubstantiated.
8. The applicant also alleges that when harm was identified to heritage assets, the Council's Committee failed to undertake the heritage balance required by local and national policy. Members referred to the requirements of Local Plan Policy 16, which repeats the aims of the National Planning Policy Framework with regard to public benefits associated with proposals. While this shows that they may have been aware of the requirement to undertake the balancing exercise, but they did not do so. It is unclear whether Members would have arrived at a different conclusion had they done so, but the applicants have been inconvenienced in that the full merits of their case were not considered by Members.
9. Whether or not the Council considered that the proposal was finely balanced is not determinative as permission was refused by the Members of its Committee. Furthermore, in my main decision, I also undertook the heritage balance exercise and found that the public benefits of the proposal would not outweigh the harm that would result.
10. The Decision Notice refers to conflict with Council's Supplementary Planning Documents, including its City Centre Design and Residential Design Guides, but Members did not identify or discuss these in the Committee Meeting and the SoC does not refer to specific conflict with these documents. However, the applicants had opportunity to address this in the appeal submissions and I too found the proposal would offend their design aims. Similarly, it did not identify conflict with the Old Town Conservation Area Character Appraisal but clearly articulated harm to the area in its SoC. In doing so, it does not rely on or draw from the comments raised by the Hull Civic Society or other third parties and Members of the Committee did not appear to refer to those comments.
11. In my main decision I was not satisfied that planning conditions could be used to address the concerns identified with the appeal scheme and further steps in conditions to redesign elements of the scheme by condition would deprive third parties of the opportunity to comment.

12. In the planning judgement, it appears to me that, having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should have been refused permission on the grounds advanced in the Council's reasons for refusal, which it was ultimately able to substantiate. However, the identification and balancing of the harms emanating from the proposal, as set out in those reasons, was not applied by the Council at its Committee and it appears to have been applied post-determination by its officers. This constitutes unreasonable behaviour.
13. Turning to wasted expense, the applicants provided their own supporting statement and final comments in response to the Council's SoC. However, the comments were straightforward and involved a short rebuttal. It appears to me that, in reality, there has been so little extra work, as a result of the appeal, that it can be regarded as 'de minimis'. In fact, the applicants have quickly and succinctly set out their case and responded to the Council's without wasting expenditure.
14. As a result, although I find that the Council acted unreasonably in its handling of the planning application and the appeal, it has not caused unnecessary or wasted expense. Therefore, an award of costs is not justified.

Paul Thompson

INSPECTOR