

Costs Decision

Site visit made on 25 April 2022

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 May 2022

Costs application in relation to Appeal Ref: APP/K2420/W/21/3287157 102 Druid Street, Hinckley LE10 1QQ

- 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 Konrad Gajda, on behalf of K&Z Properties, for a full award of costs against Hinckley & Bosworth Borough Council.
 - The appeal was against the refusal of planning permission for the proposed change of use from 6 person House in Multiple Occupation (Class C4) to 8 person House in Multiple Occupation (Sui Generis), roof light.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 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 costs application asserts that the Council erroneously refused the proposal as it was not supported by officers and identified a conflict with policy DM10 of the Development Plan where there was none.

Officer advice

4. I have noted the recommendation of the Council's officers. However, Planning Committee Members came to a view that the proposal would create a poor living environment for future occupiers. Members of the Committee considered the merits and effect of the scheme, taking into account a range of issues. The National Planning Policy Framework identifies that it is a requirement for development, among other matters, to have a high standard of amenity for existing and future users. This illustrates that the Planning Committee acted reasonably in taking into account a material planning consideration. Moreover, it was therefore entitled to reach a different conclusion to officers in this case.
5. I am therefore satisfied that Planning Committee properly assessed this matter objectively on the basis of the evidence provided to it. Accordingly, it did not behave unreasonably in reaching its own conclusion on the application. Consequently, the Council's approach and decision in this did not represent unreasonable behaviour.

Policy DM10

6. Policy DM10 is a relatively tightly drawn policy that identifies specific areas of concern with respect to development proposals. This states that “development will be permitted” where; a) nearby residents and occupiers would not be adversely affected and b) where the amenity of occupiers of the proposed development would not be affected by activities in the vicinity of the site. Accordingly, the development Plan policy is silent on the matter of the quality of proposed accommodation with regard to internal space standards and does not raise this as an area of interest.
7. Therefore, whilst the policy refers to the residential amenity associated with future and existing residents it does so in clearly defined terms that preclude reference to the size or quality of proposed internal space. Consequently, in my main decision, I have found that the proposal did not conflict with this policy. Also, the policy does not refer to the issue that relates to the Council’s concerns. As such, this policy weighed neither for nor against the merits of the proposal and was erroneously applied.
8. Consequently, as the Council did not identify a specific conflict with its Development Plan it acted unreasonably in refusing the application. This behaviour was exacerbated by its failure to justify its decision due to an absence of robust or compelling evidence within its Statement of Case.
9. Accordingly, the Council has failed to provide substantive evidence to demonstrate that the proposal would conflict with policy DM10 and how this policy could be reasonably applied to the proposal the subject of the appeal.

Conclusion

10. I therefore find that unreasonable behaviour, resulting in unnecessary or wasted expense as described in the Guidance, has been demonstrated. Consequently, an award of costs, to cover the expense incurred by the appellant in preparing and submitting an appeal against the reason for refusal, is justified.

Costs Order

11. In the 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 the Hinckley & Bosworth Borough Council shall pay to Mr Konrad Gajda, on behalf of K&Z Properties, the full cost of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Hinckley & Bosworth Borough 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.

B Plenty

INSPECTOR