
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: 9 May 2022

Costs application in relation to Appeal Ref: APP/J4525/W/22/3290625 Monkwearmouth Hospital, Newcastle Road, Sunderland SR5 1NB

- 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 Monkwearmouth Developments Ltd for a full award of costs against Sunderland City Council.
 - The appeal was against the refusal of planning permission for the demolition of existing buildings and full planning permission for the construction of a Class E Office development with ancillary café and 46 space car park, with associated landscape and infrastructure proposals.
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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 (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 cases of both parties have been made in writing. The applicant has addressed each reason for refusal individually but in summary they consider that the Council has failed to justify its decision and substantiate its position on appeal. Consequently, they are of the view that the Council has acted unreasonably in delaying development which should have been permitted and that unnecessary expense has been incurred in pursuing the appeal. The Council has also based its rebuttal against each individual reason for refusal, before advancing its overall conclusions in defence of the costs application that has been made against it.
4. The Council's response on harm to living conditions appears predicated on the fact that there were a number of objections from local residents and that issues were raised by Councillors at the Planning Committee meeting. However, there would be a significant separation between the proposal and the dwellings on Zion Terrace and this would exceed the guidance of the Development Management Supplementary Planning Document 2021. The use of half-height opaque screening on windows would further reduce any overlooking that would be possible. The Noise Impact Assessment evidenced that the proposed car park would not cause harm to living conditions and the Environmental Health Officer (EHO) did not seek to question its findings.
5. In the face of these considerations, the Council's refusal with respect to the impact on living conditions is based on vague and generalised assertions about

the proposal's impact, which are unsupported by any objective analysis. This represents unreasonable behaviour, as set out in the PPG. It was also unreasonable to seek to resist the proposal on the grounds that demolition would impact on the living conditions of nearby residents. This is because the demolition of almost any building has the potential to cause temporary disturbance and inconvenience, but it is standard practice for this to be controlled by planning conditions and other non-planning regulatory controls. In this instance, it is clear from the consultation response of the EHO that any concerns that did remain could have been satisfactorily addressed by the use of planning conditions.

6. The Council's reason for refusal with respect to the loss of the non-designated heritage asset and the associated reasoning put forward also lacks objectivity. The applicant presented a thorough case in support of their proposal which addressed matters relating to the loss of the non-designated heritage asset, including with respect to the cost and the practicality of retaining all or some of the building or its features. It is further notable that objections in principle were not received from those consultees aligned to heritage matters. A number of benefits arising from the proposal were also outlined by the applicant.
7. The reason for refusal refers to the failure to satisfy the need to regenerate or be sensitive to a non-designated heritage asset, but this does not accurately reflect the requirements of either development plan or national policy. It instead suggests a position that the building should be retained at all costs, without consideration being given to the constraints in doing so or the benefits that would arise from what was proposed. It is further not evident from the minutes of the Planning Committee that the competing considerations in this case were assessed as part of a balanced judgement. Therefore, there was also unreasonable behaviour in those respects.
8. In conclusion, the Council has acted unreasonably with respect to all three reasons for refusal and this has resulted in the applicant incurring unnecessary and wasted expense by having to pursue an appeal. Its reasoning has also not been adequately substantiated on appeal. A full award of costs is therefore justified.

Costs Order

9. 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 Sunderland City Council shall pay to Monkwearmouth Developments Ltd, the costs 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.
10. The applicant is now invited to submit to Sunderland 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.

Graham Wraight

INSPECTOR