

Costs Decision

Site visit made on 26 April 2022

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2022

Costs application in relation to Appeal Ref: APP/J3015/W/21/3285647 129 - 131 High Road, Beeston NG9 2LL

- 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 Sandip Leihal (S & S Development Group Ltd) for a full award of costs against Broxtowe Borough Council.
 - The appeal was against the refusal of planning permission for 'construct 4 storey building to contain 9 Houses of Multiple Occupation providing a total of 54 bedrooms. Change of use class from A1 to C4.'
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that where a party has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
3. It goes on to advise that among the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case. It is also to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, and not to add to development costs through avoidable delay.
4. Examples of behaviour which may lead to a substantive award of costs against the local planning authority are set out in paragraph 049 of the PPG. These include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and a failure to produce evidence to substantiate each reason for refusal on appeal.
5. The application was referred to the planning committee for determination with a recommendation to approve, subject to conditions. As such, the officer report is supportive of the scheme. The application was subsequently refused by the committee, with the reasons for refusal given in the decision notice. These

reasons were relatively clear and concise, and the relevant policies of the development plan are cited.

6. While pre-application advice is a useful tool to enable an early understanding of the likely site constraints of a proposal, this is not a guarantee of planning permission at a later date. Similarly, members of a planning committee are not duty bound to follow the advice of their planning officers. The decision is one which is a matter of planning judgement, and in this case the members determined the application contrary to the recommendation of the planning officer.
7. I have agreed with their conclusion with regards to the impact of the proposal on the character and appearance of the area, although I have found no harm to the living conditions of occupiers of adjacent dwellings or with regard to highway safety. As such, it does not follow that development proposal that should clearly have been permitted or has been prevented or delayed unnecessarily and I disagree with this first ground for the costs application. However, the information contained in the minutes of the committee meeting are both vague and indeed make generalised assertions about the proposal's impact. Moreover, the Council did not substantiate these matters.
8. With regard to the living conditions of occupiers of adjacent dwellings, some of the existing structures within the site are to be removed. This is of particular relevance to No 2 Marlborough Road and No's 1 and 3 Cedar Avenue. This would likely improve the outlook of these dwellings rather than cause harm. This assessment is laid out in detail in the planning officer's committee report.
9. Moreover, the Council's highways advisor raised no objection to the scheme based on increased parking pressure locally, subject to conditions. Although the decision makers are not duty bound to accept the recommendations of technical experts such as the highways officer, when they do not, their reasons for doing so must be justified.
10. As set out in my Appeal Decision, I have found that the proposal would cause no harm to living conditions or highway safety based on the evidence before me and accordingly this reason for refusal has not been substantiated by evidence provided by the Council and does not stand up to scrutiny on its planning merits. This being so, I consider the Council's behaviour in relation to these reasons for refusal to have been unreasonable.
11. As such, I find that these reasons for refusal have not been substantiated at appeal by evidence provided by the Council and does not stand up to scrutiny on its planning merits. Taking these matters into account, I therefore regard the Council's behaviour in relation to this reason for refusal to have been unreasonable and I agree with the second ground for the costs application.
12. I have agreed with the judgement of the Council with regards to whether the proposal would harm the character and appearance of the area. The minutes contain reference to the footprint of the development in terms of its relation to the plot and the overall height of the four-storey section in the context of the local area. Although the appellant has drawn my attention to Broadgate House in their evidence and costs submissions, the existence of a building which they consider to appear incongruous in the area does not justify allowing harm. This is particularly in light of the context of the appeal building which is similar in scale and character to many adjacent buildings in the immediate area. The

assessment of harm to the character and appearance of the area is invariably a matter of planning judgement. Although I understand the frustration of the appellant, the Council did not act unreasonably in this regard.

13. However, I must also consider whether the Council's unreasonable behaviour has meant that the appellant has incurred any unnecessary costs or wasted expense. The appellant has had to defend highway safety and living conditions reasons for refusal at appeal. Accordingly, I find that the appellant has incurred unnecessary expense in rebutting these unjustified reasons for refusal via the production of an appeal statement and final comments documents.
14. I have also considered a number of other points raised by the appellant. The application plans were amended in line with officer recommendations during the application process. However, although all parties are expected to behave reasonably throughout the planning process, I am mindful that costs cannot be claimed for the period during the determination of the planning application.

Conclusion

15. Bringing matters together, whilst I have found that no harm would arise to highway safety or the living conditions of adjacent residents, I have found the proposal to be harmful to the character and appearance of the area. This concern has led me to dismiss the appeal. As such, I am not persuaded that the appeal could have been avoided in its entirety, or that the Council has delayed development that should have been permitted having regard to the development plan, national policy and any other material considerations. However, I find that the Council did make vague and generalised assertions about the proposal's impact which were unsupported by objective analysis and has failed to produce evidence to substantiate these matters at appeal.
16. I therefore conclude that, despite the Council's unreasonable behaviour described above, the appellants' costs in mounting the appeal were not unnecessarily incurred. Consequently, the application for a full award of costs is refused. However, I find that unreasonable behaviour resulting in unnecessary and wasted expense has been demonstrated in relation to two reasons for refusal, and on this basis a partial award of costs is justified.

Costs Order

17. 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 Broxtowe Borough Council shall pay to Mr Sandip Leihal (S & S Development Group Ltd) the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in addressing the second and third reasons for refusal only, such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is now invited to submit to Broxtowe 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.

C McDonagh

INSPECTOR