



Costs Decision

Site visit made on 15 March 2022

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 June 2022

Costs application in relation to Appeal Ref: APP/B1930/D/21/3275166 6 Prospect Road, St Albans, AL1 2AX

- 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 James Parker for a full award of costs against St Albans City & District Council.
 - The appeal was against the refusal of planning permission for a single storey rear extension following demolition of the existing single storey rear extension and insertion of rooflights.
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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 where:
 - a party has behaved unreasonably; and
 - the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG clarifies that unreasonable behaviour may either be procedural or substantive. Although an application for costs may relate to events before the appeal, the PPG states that costs unrelated to the appeal are not eligible for an award.
4. The application for costs by the appellant is based on substantive and procedural grounds in that it alleges the Council acted unreasonably in; - (1) preventing development that should clearly be permitted, based on a rigid application of planning policy in a manner inconsistent with other planning application and appeal decisions; (2) failing to act upon the agent's statement of fact that No 8 had no objections or concerns; and (3) failing to work positively and proactively with the Agent to seek an approval, via minor amendments in a manner consistent with other applications.
5. In accordance with section 38(6) of the 2004 Act¹ and section 70(2) of the 1990 Act², applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The starting point of decision-making is therefore plan-led.

¹ Planning and Compulsory Purchase Act 2004

² Town and Country Planning Act 1990 (as amended)

6. The PPG states that where a local planning authority has exercised their duty to determine planning applications in a reasonable manner, it should not be liable for an award of costs. It also states that where a planning application has been refused for a proposal that is not in accordance with development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application.

Ground 1: Preventing development that should clearly be permitted, based on a rigid application of planning policy in a manner inconsistent with other planning application and appeal decisions

7. Although it will be seen from the appeal decision that I disagree with the grounds upon which the Council refused the application, I am nonetheless satisfied that it was not unreasonable for it to have formed the conclusion it did based on an objective analysis of the scheme against development plan policy.
8. The appellant states that there were other rear extensions in the area that were approved by the Council or allowed at appeal and that the Council was not therefore consistent in its approach. In particular, they are frustrated because these other extensions were not only of a similar height and depth when measured at the party boundary, but in some cases even larger than the appeal scheme.
9. However, whilst I agree that these other extensions were similar to the scheme before me in terms of their position adjacent to a party boundary, none of them were identical in form, scale and design and neither did they provide an immediate local context to the appeal scheme or help define the character of the area. In any event, whilst I recognise that consistency is important in planning, a decision-maker is entitled to reach a different conclusion if they can provide a sound planning justification for doing so.
10. In summary, the Council's duty was to determine the application in accordance with the development plan unless material considerations indicated otherwise. It did this in an objective, fair and impartial manner and I do not consider the conclusion reached to be unreasonable. The fact that there were similar extensions elsewhere was not the only issue for the Council to consider and in any event, their existence did not justify the Council approving another scheme that it perceived to be harmful to the living conditions of neighbouring occupiers.
11. In view of the above, I do not agree with the appellant that the Council prevented or delayed development that should clearly have been permitted and as a consequence, the application for costs on this substantive ground fails.

Ground 2: Failing to act upon the agent's statement of fact that No 8 had no objections or concerns

12. Although the agent informed the Council that the occupiers of No 8 did not have any objections, this does not in itself demonstrate a lack of harm and does not alter my view that the development before me was a finely balanced matter. It was a matter of professional judgement for the case officer in their role as decision-maker on behalf of the Council, after having conducted an objective analysis of the scheme, to determine what impact it may have. In

any event, there is no legal requirement for the Council to pursue responses from neighbours after the relevant consultation period has ended – in this case, the neighbour at No 8 had the opportunity to submit comments to the Council but chose not to do so.

13. Set against this context, it is important to reiterate that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise; – representations from interested parties may be capable of forming a material consideration, but they will not be the sole determinative issue in their own right.
14. In view of the above, I do not agree with the appellant that the Council should have acted upon the agent's statement of fact that the occupier of No 8 had no objections. The application for costs on this substantive ground therefore also fails.

Ground 3: Failing to work positively and proactively with the Agent to seek an approval, via minor amendments in a manner consistent with other applications

15. The appellant states that the Council failed to work positively and proactively with them to seek an approval, via minor amendments in a manner consistent with other applications. However, the appropriate time for the appellant to have sought to discuss the proposal with the Council was at the pre-application stage, as outlined by the Framework³ and PPG⁴. In this respect, I note that no pre-application enquiry was submitted by the appellant, despite this service being available to them. I am as a consequence satisfied that the appellant did have adequate opportunity to discuss the current scheme with the Council at the pre-application stage, which might have highlighted any potential areas of concern, but chose not to do so.
16. Furthermore, Section 70 of the 1990 Act states that where an application is made to a local planning authority, it may grant or refuse planning permission. This legislation does not impose a legal duty upon a local planning authority to enter into discussions with an applicant to resolve problems in a 'live' application that would otherwise result in a subsequent refusal of planning permission.
17. This is further reinforced by the PPG⁵ which states that while it is possible for both the applicant and local planning authority to suggest changes to a 'live' application before it has been determined, it is at the discretion of the latter as to whether to accept such changes or determine whether the proposed changes are so significant as to materially alter the proposal such that a new application should be submitted. The local planning authority is not therefore under any obligation to accept amended plans, which to my mind does not support the view that it is required to work proactively with applicants during a 'live' application.
18. Moreover, it seems to me that if local planning authorities were required to work proactively with applicants during a 'live' application to address all matters in dispute, this would then negate the need for any pre-application discussions to take place at all and enable applicants to avoid paying the

³ Paragraphs 39 to 43, National Planning Policy Framework, Ministry of Housing, Communities and Local Government, 20 July 2021.

⁴ Paragraph: 001 Reference ID: 20-001-20190315, Revision date: 15 03 2019

⁵ Paragraph 061, Reference ID: 14-061-20140306, Revision date: 06 03 2014

appropriate fee where a charging regime is in place. It would also enable applicants to evolve schemes without paying an additional fee during the application process, at additional cost to the Council and taxpayer (the Council having received only one application fee to determine the submission). This is not what the Framework and PPG advocates.

19. To my mind, the duty imposed on local planning authorities⁶ to “work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area” does not therefore oblige them to engage in discussions during a ‘live’ planning application in all circumstances. This would especially be the case for applications where a problem has arisen for which: - (a) the local planning authority does not consider there to be a solution as it relates to an ‘in-principle’ matter; (b) would necessitate the submission of a materially different scheme to overcome the matters in dispute; and (c) those cases where no pre-application enquiry was submitted which would have given the parties an early opportunity to attempt to resolve the issues concerned. In the current appeal, it seems to me that the dispute between the parties relating to the height and depth of the extension and its proximity to the site boundary was an ‘in-principle’ matter and could not have been resolved to satisfaction of the Council.
20. The above duty is therefore discharged in most circumstances by local planning authorities working proactively with applicants at the outset, before a scheme has been finalised and during a collaborative pre-application process where an appropriate and proportionate level of engagement can take place with consultees and neighbours. However, in those circumstances where the Council has been unable to offer such a pre-application service, the current system does allow for it to be discharged through a collaborative process agreed to by both parties via an extension of time to a live planning application or within a Planning Performance Agreement.
21. In view of the above, I am satisfied that the Council did not behave unreasonably in not seeking amendments to the scheme which ultimately resulted in the specified reason for refusal. The application for costs on this procedural ground therefore fails.

Unnecessary or wasted expense

22. Given my conclusions on the allegations of unreasonable behaviour, the matter of unnecessary or wasted expense does not need to be considered.

Conclusion

23. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Robert Fallon

INSPECTOR

⁶ Paragraph 38 of the Framework