



Costs Decision

Site visit made on 6 September 2022

by **I Radcliffe BSc(Hons) MRTPI MCIEH DMS**

an Inspector appointed by the Secretary of State

Decision date: 23 September 2022

Costs application in relation to Appeal Ref: APP/J3015/W/22/3297042 129-131 High Road, Beeston, Nottingham 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 S & S Developer Group Limited for a full award of costs against Broxtowe Borough Council.
 - The appeal was against the refusal of planning permission for the construction of a 3-storey building comprising 7 apartments (Use Class Order C4) and the provision of a parking area.
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Decision

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

Reasons

2. 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 process¹.
3. There are 2 claims to assess: whether the local planning authority produced evidence to substantiate each reason for refusal on appeal; and, whether in reaching its decision it failed to take into account relevant material considerations.
4. In relation to the first claim, there were three issues contained within the Council's reason for refusal: the effect of the proposal on the character and appearance of the area; its effect on the living conditions of neighbours with regard to outlook; and, its effect on on-street parking.
5. Issues that relate to character and appearance often involve matters of judgement. Whilst I disagreed with the Council's assessment of this matter, through its reason for refusal and appeal statement it substantiated its grounds for objection in relation to this issue.
6. With regard to living conditions, judgement is also important. The committee report thoroughly considered the impact of the proposed development in this regard and found that it would be acceptable. The only evidence provided at appeal stage to substantiate the Council's concerns contained within the reason for refusal that the outlook of neighbours would be harmed was that the boundary of the appeal site was 17m from the rear elevation of 1 Cedar Avenue. No attempt was made to address the fact that the committee report identified that the appeal building would actually be located a further 13m away which would give a separation distance of 30m between facing elevations. By any reasonable estimation this significant distance is more than sufficient to ensure that the building, which would

¹ Paragraph: 028 Reference ID: 16-028-20140306, 'Appeals', 'Why do we have an award of costs?'

- predominantly be two storey and flat roofed in views from No 1, would not unduly enclose the outlook from this dwelling or be overly dominant or overbearing.
7. Similarly in relation to parking, the Council's position is that the scheme would exacerbate the pressure on on-road parking and, on the basis of its appeal statement, harm highway safety and capacity. In so doing, no explanation has been given as to why with the very good access on foot, by bicycle and public transport to services and facilities the development would result in a significant increase in pressure on on-road parking, or why that pressure would be harmful. It also failed to address the far higher demand on parking, based on the Council's parking standards, of the extant retail use of the building in comparison to the proposed residential use when assessing the impact of the scheme.
 8. Turning to the second claim, in determining the planning application it is not apparent that the Council carried out a planning balance to weigh the material considerations in favour of the scheme against the harm identified. These considerations were the help the scheme provided to address the need for purpose built accommodation attractive to students that would reduce the pressure on existing housing (suitable for families) in the area and so help ensure that housing is available for different groups in the community.
 9. However, given the great emphasis on good design in the National Planning Policy Framework ('the Framework'), and the advice in paragraph 134 of the Framework that schemes that are not well designed should be refused permission, the Council would have been entitled to have concluded that these considerations were insufficient to outweigh the harm it believed would be caused by the scheme to the character and appearance of the area. Therefore whilst the Council did not appear to carry out this balance, I am not persuaded that this would have resulted in a different decision to refusing permission.
 10. Taking all these matters into account, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has been demonstrated in relation to that part of the Council's reason for refusal that relates to living conditions and on road parking. As a result, a partial award of costs is justified.

Costs Order

11. 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 S & S Developer Group Limited, the costs of the appeal proceedings limited to those costs incurred in dealing with the Council's reason for refusal in relation to living conditions and parking; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. 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.

Ian Radcliffe

Inspector