



Costs Decision

Site visit made on 5 July 2022

by S D Castle BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2022

Costs application in relation to Appeal Ref: APP/Q4625/W/21/3284732 Land Adjacent to 9 Bellamy Close, Shirley, Solihull, West Midlands B90 3DJ

- 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 Paul Hunt for a full award of costs against Solihull Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for change of use of land from untitled, unused land to use ancillary to the residential occupation of 9 Bellamy Close.
-

Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expenses in the appeal process.
3. The PPG¹ provides examples of behaviours that risk an award of costs, including, amongst others: 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; failing to produce evidence to substantiate each reason for refusal on appeal; and making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The applicant contends that the Council has acted unreasonably by failing to produce evidence to substantiate the reason for refusal.
5. The planning application was recommended for approval by the Council's professional officers and that recommendation was overturned by Council Members. The Council is not duty bound to follow the advice of its professional officers, but if a different decision is reached, the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
6. The Council did not submit an appeal statement. The Council's case, therefore, predominantly relies on the contents of the committee report, the relevant committee minutes, and the wording of the refusal reason on the Council's

¹ PPG Paragraph: 049 Reference ID: 16-049-20140306 - Revision date: 06 03 2014

decision notice. The Council's rebuttal of the application for costs accepts that no further justification was provided beyond the reason for refusal itself.

7. Little evidence has, therefore, been put forward by the Council to substantiate the harms alleged in the refusal reason. The Council has made assertions within its refusal reason that are not supported by an objective analysis. Indeed, the assertions are contrary to the assessment of the Council's professional officers upon which the Council's case, in part, relies.
8. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should reasonably have been permitted. The Council's failure to produce evidence to substantiate the reason for refusal constitutes unreasonable behaviour.
9. Overall, therefore, I find that unreasonable behaviour has been clearly demonstrated by the Council and this has caused the applicant unnecessary expense in the appeal process.

Costs Order

10. 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 Solihull Metropolitan Borough Council shall pay to Mr Paul Hunt the costs of the appeal proceedings described in the heading of this decision; with such costs to be assessed in the Senior Courts Costs Office if not agreed.

S D Castle

INSPECTOR