
Costs Decision

Site visit made on 4 October 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2022

Costs application in relation to Appeal Ref: APP/R0660/W/22/3298807 44 Knutsford Road, Wilmslow SK9 6JB

- 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 Gordon Turner for a full award of costs against Cheshire East Council.
 - The appeal was against the refusal of planning permission for the erection of one detached dwelling.
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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. Paragraph 30 of the Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Local planning authorities are at risk of an award of costs against them where there is evidence of 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. This may include when vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis are made.
4. For the purposes of the appeal, the applicant provided a daylight and sunlight assessment to the Council which was not available when it made its decision on the planning application. The applicant asserts that the Council should have considered its contents with a view to re-issuing its Decision Notice or withdrawing its second reason for refusal in the appeal proceedings.
5. The Procedural Guide to Planning Appeals – England states that the appeal process should not be used to evolve proposals and is clear that revisions – in this case new information, intended to overcome reasons for refusal should normally be tested through a fresh application. It is for that reason, and that the document would not have been open to wider scrutiny, that I have not considered it in my own decision. I find the invitation to re-issue a Decision Notice on information provided post-decision to be somewhat misplaced.

6. The Council's advice in response to the submission of the additional report was instructive of the available options going forward. At a time when the Council was unable to resource a pre-application advice service, I do not find that their stance amounted to unreasonable behaviour.
7. However, although the Council's first reason for refusal identifies a conflict with a guideline contained within the development plan¹, it failed to provide a reasoned assessment of any adverse effects of doing so. As a flexible policy concerned with the matters of space, light and privacy for prospective residents, it was necessary for the Council to clearly identify the harm therein which might arise from the proposed siting of the dwelling in relation to the commercial property to the southwest.
8. I find that there is little objective analysis of those matters within the Council's report such that its comments in relation to the policy are vague at best. It identifies that the degree of spacing does not meet the guideline but concludes that the level of amenity for future users would be acceptable. Therefore, it was unclear as to what aspect of the level of spacing between the proposal and the commercial site was of concern. This reason for refusal was not subsequently expounded in the appeal.
9. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in part. For this reason, and having regard to all other matters raised, a partial award for costs is therefore justified.

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 the Cheshire East Council shall pay to Mr Gordon Turner the costs of the appeal proceedings only in relation to the matter of the Council's first Reason for Refusal.
11. The applicant is now invited to submit to the 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.

R Hitchcock

INSPECTOR

¹ Saved Policy DC38 of the Macclesfield Borough Local Plan [2004]