



Costs Decision

Site visit made on 4 January 2023

by Nichola Robinson BA (hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2023

Costs application in relation to Appeal Ref: APP/G3110/W/22/3304247 39 South Parade, Oxford, Oxfordshire OX2 7JL

- 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 Cantay Estates Ltd for a partial award of costs against Oxford City Council.
 - The appeal was against the refusal of planning permission for Demolition of part of existing buildings. Erection of 3 storey building comprising 6 x 1 bedroom flats and re-arrangement of existing flats (Use Class C3) with rear area for amenity purposes. Bin and bicycle stores. Pedestrian accesses from Stratfield Road.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may be procedural and/or substantive. In this instance, the applicant refers to the Council's alleged unreasonable approach during the determination of the planning application.
3. The applicant states that this behaviour caused the application to be refused, thereby necessitating the preparation of the appeal. The applicant seeks a full award of costs.
4. The applicant states that during the discussion by planning committee opposing views were voiced by committee members which did not reflect the Officer recommendation. It is stated that the Council did not provide clear and precise reasons for refusal. I note that the decision was contrary to the recommendation to planning committee. However, members reached a different conclusion on the proposal which they are entitled to do.
5. Additionally, it is stated that the reference in the second reason for refusal to the overbearing impact on neighbouring properties was not reflected in the committee resolution and does not make clear which properties (other than 60 Stratfield Road) are alleged to be affected and in precisely what way.

6. Whilst I have not been provided with a transcript of the committee meeting, I have been provided with the minutes of the meeting where it is stated that "In discussion the committee considered various issues of concern, including (but not limited to).... the potential for overbearing impact on the property at 60 Stratfield Road." The minutes go on to state that the Committee resolved to refuse the application for 2 reasons including the following refusal reason "The impact of the proposal on neighbouring amenity; specifically the loss of privacy to the rear of properties at 42, 43 and 44 South Parade and 60 Stratfield Road caused by overlooking by stairwells, contrary to Policy H14".
7. Whilst the minutes indicate that the potential overbearing impact on 60 Stratfield Road was discussed during the committee debate, reference to this impact is not reflected the committee resolution. Furthermore, whilst the Council's case states that this issue was carefully debated and considered by the committee, nonetheless a suitably substantiated case which sets out how the proposed development would result in an overbearing impact on 60 Stratfield Road and other unnamed properties has not been presented by the Council. The failure to substantiate this part of the second refusal reason amounts to unreasonable behaviour.
8. The applicant also states that the Committee failed to fully consider the wider site context and did not give appropriate weight to Oxford Local Plan (2020) (LP) policy AOC5.
9. The Council concluded that the proposal would result in harm to the character and appearance of the area. I acknowledge that the Council have made reference to amongst others, LP Policy AC05. However, each application is taken on its own planning merits. As such, in my decision I found to the contrary. Therefore, as the Council were carrying out the normal activities associated with a planning application this does not amount to unreasonable behaviour.
10. It is also stated that unreasonable behaviour occurred in the refusal of planning permission on a ground capable of being dealt with by a condition. The applicant states that the overlooking from the rear staircase could be dealt with by condition requiring the approval of measures to prevent overlooking of neighbouring properties. It is confirmed that the applicant would agree to the imposition of such a condition. Nonetheless, as set out in the accompanying appeal decision, I have found that the approval of such detail cannot be dealt with by condition. Thus, the failure to attach such a condition to overcome this matter cannot be considered unreasonable.

Conclusion

11. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

12. 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 Oxford City Council shall pay to Cantay Estates Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs

incurred in arguing against the Council's refusal on grounds of the overbearing impact of the development.

13. The applicant is now invited to submit to Oxford City 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. In the event that the parties cannot agree on the amount, such costs shall be assessed by the Senior Costs Office.

Nichola Robinson

INSPECTOR