



Costs Decision

Site visit made on 31 January 2023

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 February 2023

Costs application in relation to Appeal Ref: APP/R3705/W/22/3307971 89-91 Main Road, Austrey CV9 3EG

- 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 and Mrs Hames for a full award of costs against North Warwickshire Borough Council.
 - The appeal was against the refusal of planning permission for alterations and extensions to house including redesign of swimming pool and conservatory as previously approved without complying with a condition attached to planning permission Ref PAUSAV/0602/96/FAP, dated 14 August 1996.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and so caused the costs applicant to incur unnecessary expense in the appeal process. This application claims unreasonable behaviour by the Council in terms of (i) failing to objectively assess the proposal, (ii) failing to substantiate its objections, (iii) relying upon vague, inaccurate, generalised and unsubstantiated assertions about the proposal's impact, (iv) refusing planning permission that clearly should have been allowed having regard to the development plan policies, and (v) refusing planning permission on a ground capable of being dealt with by planning conditions.
3. The decision to refuse planning permission was made by the Council's planning and development board against the advice of its officers. The Council is not duty bound to follow this advice but it has to clearly demonstrate on planning grounds why a proposal is unacceptable and properly substantiate its reasons.
4. The board's decision was made on 7 September 2022 after reports on the planning application had been put before it in May and July 2022. The board twice deferred making a decision on the application, firstly to seek an amendment to reduce the time periods for the proposed community use and secondly to allow a visit to the site. These actions indicate that the board members have carefully considered the proposal and its effects. As such, the evidence suggests that the board has carried out an objective assessment.
5. I can understand the appellants' grievance that the board's concern on the effect of vehicle movements on neighbouring properties was not raised as a potential issue prior to its meeting on 7 September 2022. However, it is also

understandable that such a concern would only come to light following the board members' site visit on 5 August 2022. Also, objections to the proposal due to the effect on living conditions of occupants of 93 and 99 Main Road (Nos 93 and 99) had been submitted. Therefore, it was clearly a matter that the board would need to consider. I find no convincing evidence to indicate that the board members was unduly or inappropriately influenced by concerns raised by interested parties in reaching its decision.

6. The Council's refusal reason is brief but it refers to a relevant local plan policy and explains the concerns regarding the effects of vehicular movements on neighbouring properties. The Council's appeal statement of case sets out its contentions in more detail by referring to the existing vehicular usage of Flats Lane and how the proposal would increase car movements. The case made is again brief but the Council has clearly submitted evidence to substantiate its concerns. It is appropriate for the Council to refer to objections received from nearby residents as they offer support for its case.
7. The Council has not provided any technical noise assessment to support its contentions. The appellants suggest that without such an appraisal, a site visit by board members is inadequate to arrive at a well-informed view on noise effects. However, I note that the appellants also have provided no noise assessment. As such, my assessment of the appeal has had to be made on the same basis as the board members' decision. In such circumstances, I find the Council has not acted unreasonably in refusing permission without a technical noise assessment to support its concerns.
8. The refusal reason in itself does not identify the neighbouring properties the Council considers would be adversely affected. Also, there is little explanation on why the Council considers traffic would cause inconvenience. However, further explanation has been provided as part of the appeal and there is no evidence that the appellants have misunderstood or misinterpreted the Council's concerns. In any event, the occupiers of Nos 93 and 99 have also made representations that clearly outline their objections on how traffic associated with the development would cause them nuisance. The appellants have been made aware of these concerns and had the opportunity to respond. In such circumstances, I find the Council's submissions are not so vague or generalised to be unreasonable.
9. The officer's reports on the planning application highlight the benefits of swimming lessons and there is no evidence to show the representations in support of the proposal have been ignored. As highlighted in my appeal decision, there are benefits as well as detrimental effects to consider. The assessment of such factors and the weight to be attributed in the final balance are matters of planning judgement. I have arrived at the view that the benefits do not outweigh the harm and so the proposal is not clearly permissible in light of development plan policies. It follows that the Council has not been unreasonable in deciding to refuse planning permission.
10. In effect, the application seeks to amend the disputed condition with limitations on the times of private swimming lessons. Despite these time restrictions, I have found the proposal would lead to harm to residential amenity and highway and pedestrian safety. In light of the basis on which the application was made and how it has been considered, I am aware of no conditions that could be reasonably imposed which would fully address these concerns. It

therefore follows that I find the Council has not acted unreasonably by refusing permission on grounds that could be addressed by the imposition of planning conditions.

11. The appellants also raise concerns over how the board members acted at its meeting in September 2022 and how they reached the resolution to refuse planning permission. However, I am unconvinced that any of the complaints in these regards identifies a type of behaviour that warrants an award of costs. I appreciate the appellants' misgivings on the Council's actions and decision but I find no evidence of unreasonable behaviour. Therefore, I conclude an award of costs is not justified.

Jonathan Edwards

INSPECTOR