



Costs Decision

Site visit made on 28 February 2023

by **Helen Davies MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6th March 2023.

Costs application in relation to Appeal Ref: APP/Z0116/W/22/3307466 Land to rear of 149 Marksbury Road, Bristol BS3 5LD

- 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 Mrs Alex Fry for a full award of costs against Bristol City Council.
 - The appeal was against the refusal of planning permission for Demolition of 149A Marksbury Road and erection of 5no. single storey dwellings on land to the rear.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The PPG makes it clear that a local planning authority is at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal.
3. The applicant claims the Council have behaved unreasonably in a number of substantive ways, including that they prevented development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failed to produce evidence to substantiate each reason for refusal on appeal; and refused permission on a planning ground capable of being dealt with by conditions.
4. It can be seen from my appeal decision that I did not agree with the Council that there were sufficient grounds for refusing planning permission. However, such decisions are a matter of judgement and this does not equate to the Council having acted unreasonably. The evidence before me in the appeal indicates that the Council refused the application contrary to the initial advice of their professional officers and professional consultees. Whilst a Council Committee is not bound to accept the recommendations of their officers, it is still necessary for an appropriate case to be made for the contrary view.
5. The first reason for refusal is focused on the timing of ecology surveys, rather than their content. While I appreciate the Council concerns about site clearance, as set out in my appeal decision, planning permission was not required to clear the site. In addition, the Council Ecologist did not object to the proposal and professional surveys found the site to be of no particular ecological value. The Council have not specified any harm or provided

- substantive evidence from a suitably qualified person to back up a reason for refusal which was contrary to the findings of professional ecologists.
6. Professional comments from the Fire and Rescue Service and Highways officers raised no objection to the proposed access arrangements, subject to suitable conditions. Despite this, the second reason for refusal finds the access unsuitable. No substantive evidence has been provided to explain why a decision was taken contrary to professional advice, or to support the decision that was made.
 7. The third reason for refusal relates to flooding and drainage. As can be seen from my appeal decision, I considered that suitably detailed flood assessments and mitigation proposals had been submitted. Again, no evidenced and suitably authoritative reasons for discounting professional assessments and officer advice have been presented. I also concluded that it was appropriate to impose a planning condition to ensure appropriate drainage at the site, thus overcoming the third reason for refusal. In this regard, I was in agreement with the Council drainage officer and a Planning Inspector for a previous appeal at the site. The Council have not fully explained why they considered that a condition was not appropriate or would not have been effective.
 8. Having regard to the evidence before me, if the Council had fully based their assessment of the proposal on local and national planning policy, and taken on board all material considerations, including from professional consultees as well as neighbours, I consider it likely that permission would have been granted, subject to the use planning conditions to make certain elements acceptable. The appeal could therefore have been avoided.

Conclusion

9. For the reasons given, I find that the Council behaved unreasonably in that they prevented a proposal which was in accordance with planning policy, subject to conditions, and failed to substantiate each reason for refusal. Consequently, unreasonable behaviour resulting in unnecessary or wasted expense through the appeal process, as described by the PPG, has been demonstrated and a full award of costs is 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 Bristol City Council shall pay Mrs Alex Fry the costs of the appeal proceedings described in the heading of this decision.
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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for the detailed assessment by the Senior Courts Costs Office is enclosed.

Helen Davies

INSPECTOR