



Costs Decision

Site visit made on 28 February 2023

by G C Bayliss BA MA MA MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 March 2023

Costs application in relation to Appeal Ref: APP/K2420/W/22/3305662 19-21 Ratby Road, Groby LE6 0GF

- 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 & Mrs & Mrs & Mrs Stephens and Arkle, for a full award of costs against Hinckley and Bosworth Borough Council.
 - The appeal was against the refusal of an application to change the use from residential to commercial for No.21 Ratby Road. Demolition of retaining walls and outbuildings. Erection of two dwellings, formation of new access and car park.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Appellant submits that the Council has acted unreasonably in that the decision at committee was not determined with full regard to the details of the application, nor was it determined with proper consideration of the Development Plan and the National Planning Policy Framework. Furthermore, the decision failed to take account of the professional advice of the planning officer and the Council's consultees on the application. The Council's objections are therefore not supported by professional expertise or stand up to scrutiny.
4. Furthermore, the appellant alleges that the reasons for refusal given by the Councillors were neither fully considered nor based on a sound application of the Council's policies and suggests that the officer writing up the refusal struggled to interpret the intent of the Councillors and to find suitable policy reasons to support the refusal.
5. The appellant considers that the appeal proposal successfully addressed concerns raised in a previous application and was the result of proactive working with the Council which is evidenced by the officer report and the recommendation for approval. The appellant states that the application could have been approved under delegated powers. By unnecessarily refusing an acceptable planning application, development costs have been increased in respect of further professional fees incurred in pursuance of an unnecessary appeal and avoidable delay.

6. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. Whilst the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached, the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
7. The first reason for refusal cites the potential for noise disturbance to future occupants arising from siting the dwellings adjacent to business uses. In the officer's committee report the potential for noise from the commercial buildings was noted, and the planning officer recommended a condition to secure a suitable level of noise mitigation, having taken advice from the Council's environmental health officer. The Council's appeal statement failed to provide any evidence of the assumed noise disturbance or to explain why the suggested noise mitigation condition would not adequately address any harm occurring to the future occupants. The appeal statement failed to adequately substantiate this matter or to explain why it would be a determinative matter on which the application should be refused.
8. In relation to the second reason for refusal, there is evidence that both the planning and conservation officers had worked with the appellant to address previous concerns resulting in no objections from them to the submitted scheme, subject to conditions. Despite this, the Council refused the application based on adverse impacts on the significance of the Conservation Area. Again, there is little within the appeal statement to substantiate why the two proposed dwellings would not be in keeping with the character of the Conservation Area. The only substantive evidence relates to the alteration of the front boundary wall which I noted would be set back and have its prominence reduced. However, in my decision, whilst I have had regard to the boundary wall, in my view, this is a relatively minor detail within a much larger scheme which I have found has many positive attributes and overall would cause no harm to the significance of designated heritage assets. I therefore consider that there is no adequate substantiation of this reason for refusal.
9. Regarding the final reason for refusal, the appellant had sought to address previous concerns relating to the site access and although a speed survey was not undertaken, the Local Highway Authority raised no objections to the proposed development. Despite evidence that the Local Highway Authority had fully appraised the proposal, the Council refused the application based on a perceived highway safety danger to those using the access and Rookery Lane, giving little evidence to support this reason for refusal. Furthermore, the Council's appeal statement did not acknowledge or comment on the appellant's specialist Highways Assessment produced as part of its appeal documentation. Instead, the Council's appeal statement relies on vague and unsubstantiated claims that the assessment of the site access was inadequate.
10. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other relevant considerations, the development proposed should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning

Policy Framework and the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal.

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an 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 Hinkley and Bosworth Borough Council shall pay to Mr & Mrs & Mrs & Mrs Stephens and Arkle, the costs of the appeal proceedings described in the heading of this decision.
13. The applicant is now invited to submit to Hinkley and Bosworth Borough 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.

G Bayliss

INSPECTOR