



Costs Decision

Site visit made on 1 March 2023

by F Rafiq BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2023

Costs application in relation to Appeal Ref: APP/A1015/W/22/3307796 Land adjacent Walton Walk / Boythorpe Avenue, Boythorpe, Chesterfield S40 2QE

- 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 Ms Claire Hancock (RTH Projects) for a partial award of costs against Chesterfield Borough Council.
 - The appeal was against the refusal of planning permission for one pair new build semi-detached dwellinghouses.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process. The type of behaviour that can lead to a costs award includes both substantive and procedural matters relating to issues arising from the planning merits of the appeal or relating to process.
3. The applicant has set out that the Council has behaved unreasonably by not producing evidence to substantiate its decision. In relation to the first reason for refusal, the Council's Statement (17 January 2023) provides a justification for its decision. At paragraph 1.4, it explains the Council's reasoning and although this is brief, it does justify its concerns in explaining that it was the proposal presenting as a single storey development, where the prevailing character of the area is of two storey buildings. Such matters relating to character and appearance involve an element of judgement, and the Council was entitled to exercise its planning judgement as it saw fit. Although I do not share the Council's assessment of the appeal proposal in relation to this issue, I do not consider they acted unreasonably by making vague, generalised or inaccurate assertions.
4. In relation to the second reason for refusal on highway safety matters, whilst the Council has set out an explanation of its concerns at paragraph 1.5 of its Statement, it has not provided an objective analysis of why the proximity of the proposal to a junction or the presence of on-street parking would result in highway safety concerns. This is especially the case given the Highway Authority had not objected to the proposal, and the Council should have

explained why it had departed from this advice, which it has failed to do. The Council has acted unreasonably in this regard.

5. The applicant has also referenced the Council's decision making during their consideration of the application subject of this appeal, and in particular the proceedings at Planning Committee and the Member's site visit. It is clear based on the Council's response¹ to the complaint that was made to them, that there were certain shortcomings. Whilst this is regrettable, it is evident that the Council would have refused planning permission on grounds relating to character and appearance and I do not therefore find the procedural shortcomings has resulted in unreasonable behaviour which has caused another party to incur unnecessary or wasted expense.
6. The applicant has stated that costs were incurred in making design revisions during lengthy discussions with the Council. I do not however consider the expense associated with this work is unnecessary or wasted, as such discussions and amendments are a normal part of the process in the consideration of an application, in order to, as the applicant has stated, reach the best possible design for a site.
7. Although an appeal would have been necessary in relation to the first reason for refusal, the applicant has been required to address highway safety matters in the appeal submission. The applicant has therefore incurred unnecessary or wasted expense in this regard and a partial award is justified.
8. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

9. 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 Chesterfield Borough Council shall pay to Ms Claire Hancock (RTH Projects), the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the second reason for refusal relating to highway safety.
10. The applicant is now invited to submit to Chesterfield 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

F Rafiq

INSPECTOR

¹ Chesterfield Borough Council, 28 September 2022