



Costs Decision

Site visit made on 23 March 2023

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 May 2023

Costs application in relation to Appeal Ref: APP/J3015/W/22/3309040 Land between Styring Street and Station Road, Station Road, Beeston NG9 2WJ

- 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 Cassidy Group (Beeston) Limited for a full award of costs against Broxtowe Borough Council.
 - The appeal was against the refusal of planning permission for the construction of purpose-built student accommodation building (sui generis) and ground floor commercial unit (Class E(g)(i) with associated access, car parking, landscaping and infrastructure.
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Decision

1. The application for an 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 thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may be procedural and/or substantive.
3. 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. There is also a risk of a costs award by preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The applicant claims that the Council has acted unreasonably in that it has gone against the advice of its professional officers without good reason and there is no evidence to support/rationalise its reasons for refusing the application. Furthermore, the Council has sought to prevent development which complies with the development plan and national policy. The Council disputes that it has acted unreasonably.
5. I have noted the recommendation of the Council's officers which was for approval. The planning committee is not duty bound to follow the advice of its officers as long as its contrary decision is made on planning grounds and clear evidence is provided to substantiate that reasoning.

6. The minutes of the committee meeting are brief but do identify a concern about the living conditions of future occupiers due to the small size of the rooms and intensity of the occupation for the size of the site. Concern about the living conditions of nearby residents was raised due to a lack of on-site parking provision. A reference was also made to the students only being in occupation for part of the year, although it is not clear from the minutes as to what the committee's concern was in this regard. Although the minutes indicate that members debated the design of the proposed building, design considerations appear to have been included in the reason for refusal only in so far as they relate to the internal floor space.
7. The Council's decision notice includes one reason for refusal, which comprises three distinct components. In summary, these are that the size and design would represent an unsatisfactory development which fails to provide appropriate internal floor space and therefore a substandard level of amenity would be provided for future occupiers; that inadequate parking would be provided, and this would increase street parking in surrounding areas; and that restricting occupation to students would fail to maximise the potential contribution to town centre footfall during non-term periods.
8. In terms of internal floor space, the Council's appeal statement focuses on non-compliance with the Nationally Described Space Standard¹ (the NDSS). The floor space of the studios would fall below this national guidance. However, while there is a requirement in Policy 10 of the ACS² for new development to be designed to create an attractive, safe, inclusive and healthy environment, I have not been made aware of any development plan policies that refer to internal space standards or that require compliance with the NDSS. In addition, the submitted evidence identifies that the studios would exceed the minimum space requirements in the Council's House in Multiple Occupation (HMO) Property Standards (2018) for combined bedroom, living and kitchen units. Furthermore, the submitted evidence indicates that the floor space proposed would be consistent with similar schemes approved by the Council.
9. There is concern in the locality about the limited proposed parking provision given the scale of the development. Nevertheless, little evidence was put forward to establish that there is an existing parking problem and only general assertions were made by the Council about the likelihood of on-street parking shortages for nearby residents arising from the proposed development. The Highway Authority did not raise a concern that the lack of parking would cause a highway safety issue. The Council's appeal statement does not address the mitigation measures proposed by the applicant to manage the parking demand of future occupiers. Moreover, the Council acknowledges that the relevant development plan policy does not include minimum standards for parking.
10. The appellant provided evidence about the economic benefits of the proposal. The Council's appeal statement refers to concerns that due to seasonal student fluctuations the development would fail to maximise the potential contribution to town centre footfall during non-term periods. However, the Council has not demonstrated with any clear evidence why this would be unacceptable, especially as there appears to be no development plan policy that prevents student accommodation from being sited in a town centre location.

¹ Technical housing standards – nationally described space standard, 2015

² 2014 adopted Greater Nottingham Aligned Core Strategies Part 1 Local Plan

11. For these reasons, in my view, having regard to the provisions of the development plan, national planning policy and other relevant considerations, the development proposed should not have reasonably been refused for the reason given. Although the Council has sought to justify the reason for refusal in its appeal statement, it appears to me that the decision was based on vague, generalised assertions about the proposal's impacts which have not been supported by objective evidence. Accordingly, the Council has failed to substantiate its reason for refusal. This amounts to unreasonable behaviour as set out in the PPG, and the applicant has been faced with the unnecessary expense of addressing this.

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 Broxtowe Borough Council shall pay to Cassidy Group (Beeston) Limited, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Broxtowe 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.

F Wilkinson

INSPECTOR