



Costs Decision

Site visit made on 8 June 2023

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2023

Costs application in relation to Appeal Ref: APP/W4515/W/23/3315527 The Sandpiper, Farringdon Road, Marden, Cullercoats NE30 3ER

- 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 Ian Tubman (Malhotra Leisure Ltd) for a full award of costs against North Tyneside Council.
 - The appeal was against the refusal of planning permission for Demolition of existing public house and redevelopment of site to provide 1no.retail unit (Class E), 1no.drinking establishment with expanded food provision (Sui Generis) and 14no. apartments, associated car parking, infrastructure and landscaping works.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. The applicant considers that the Council has relied upon vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis. The application was presented to Planning Committee with a recommendation to grant planning permission and in making their decision the Council disregarded this recommendation, the assessment undertaken by statutory consultees and the evidence submitted by the applicant in support of the development proposal. In addition, the Council does not have a five year housing land supply and this was pointed out at the Planning Committee meeting.
4. In response, the Council states that the Planning Committee does not have to follow the advice of their officers and as democratically elected members of the community they are required to consider and express their opinion on the planning merits of this development. They are within their rights to disagree with their officers, providing that they do not behave unreasonably. In addition to reading the Planning Officer's report, they used their local knowledge and understanding of residents' views to help them to reach their decision. Their decision was reached after undertaking an objective reasoned balance of the material presented to them.
5. Whilst I accept that it will have been frustrating to the applicant that the Council Members took a different view to that which was recommended by their officers, they were entitled to take this course of action and it does not in itself represent unreasonable behaviour. However, in doing so, objective analysis

was required and the reasoning for their conclusions needed to be clearly explained. The Council's defence of the reasons for refusal that were given is set out primarily in their Statement of Case (SoC).

6. With regard to reason for refusal 1, the SoC fails to engage with the views of the Council's own Urban Design team and their Planning Officer that the height and massing of the proposed building could be satisfactorily accommodated on the appeal site. It also pays no consideration to the Council's Design Quality Supplementary Planning Document 2018 (DQSPD) which advises that corner plots are ideal opportunities for raising the height of a building to provide a prominent landmark that can also provide additional floor space.
7. The position taken by the Council relates predominantly to the fact that the proposed building would be higher and of a greater massing than other existing buildings. However, given that design advice had been made available and because of what is set out in the DQSPD, it was incumbent on the Council to expand on and explain as to why, given the specifics of the appeal site, the proposed development was unacceptable. That they did not do this represents unreasonable behaviour.
8. The SoC notes that a degree of overlooking is already present between existing dwellings and that there would be no direct overlooking from the proposed development into the main windows of neighbouring properties. The SoC refers specifically to the number and the height of the proposed windows and the impact this would have on the privacy of the occupiers of existing dwellings. However, again there is no assessment made of the specifics of the appeal case, including that many of the windows on the proposed rear elevation would not actually face towards the more private rear garden areas of the nearest dwellings.
9. Furthermore, although some windows would face towards the rear gardens of the adjacent dwellings, the Council does not dispute that the separation distance would be typical of that found in urban areas. Whilst the matters of overlooking and privacy to some degree fall to be a simple matter of judgement for the decision maker, taken as a whole I consider that the Council have failed to substantiate and well reason their position that the proposed development would have a significant adverse impact upon the living conditions of nearby occupiers. This too is unreasonable behaviour.
10. In terms of reason for refusal 3, the SoC makes reference to the Planning Committee having taken into account the number of objections from local residents on parking and highway safety grounds. It also refers to Member's specific knowledge of the local area and that their decision was reached having fully taken into account the technical reports provided. There is no commentary however as to what this specific knowledge was, or how the parking provision proposed would result in a highway issue.
11. This is in the context of technical reports being provided by the applicant in support of the provision provided, these being subject to discussion with the Highway Authority (HA), and ultimately the HA not objecting to the proposed development on any ground. In the face of this, relying on the number of objections and local knowledge without explaining how this demonstrates that there would be a highway safety issue arising from the proposed parking provision is unreasonable behaviour.

12. In light of my finding of unreasonable behaviour with respect to each of the three reasons for refusal, the matter that the applicant raises with respect to housing land supply is not determinative on the outcome of this costs application. That said, whilst housing land supply is referred to in the SoC and briefly in the Committee Minutes, it is worthy of acknowledgement that it is not clear how this consideration was weighed in the planning balance at the point the decision was made.
13. For the reasons given above, I find that unreasonable behaviour has occurred with regard to the reasons why the planning application was refused. This has resulted in unnecessary and wasted expense being incurred by the applicant by virtue of them having to pursue an appeal. Whilst I have dismissed the appeal, this has been done so solely due to the absence of a planning obligation. As it is evident that the Council was promoting the need for the planning obligation and the applicant was not disputing its necessity, this is a matter that could have been resolved locally without the need for an appeal. In conclusion, on the basis of what I have set out, I find that a full award of costs is warranted.

Costs Order

14. 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 North Tyneside Council shall pay to Mr Ian Tubman (Malhotra Leisure Ltd) 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.
15. The applicant is now invited to submit to North Tyneside 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.

Graham Wraight

INSPECTOR