



Costs Decision

Site visit made on 13 June 2023

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 July 2023

Costs application in relation to Appeal Ref: APP/H2733/W/22/3312612 12 Carlton Road, Filey, Scarborough, North Yorkshire YO14 9AW

- 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 Scarborough Borough Council (now North Yorkshire Council) for a full award of costs against Mr John Sawdon.
- The appeal was against the refusal of planning permission for the removal of the existing commercial properties at 12 Carlton Road in Filey and to be replaced with a new residential development. 4 – 2 bedroom flats; 2 – 2 bedroom bungalows.

Decision

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

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. Unreasonable behaviour may be procedural and/or substantive.
3. In summary, the Council claims that the appellant has acted unreasonably in pursuing an appeal for a scheme that was refused permission on the basis of a conflict with the development plan. Furthermore, the appeal proposal is similar to that of application reference 22/00694/FUL which was refused permission in August 2022 (the previously refused scheme), and the appellant did not engage in pre application discussions to try and find a solution. It is therefore contended that the appeal had no reasonable prospect of succeeding. The appellant refutes that he has acted unreasonably.
4. The first reason for refusal on the decision notice for the previously refused scheme is based on a conflict with the same 2017 adopted Scarborough Borough Local Plan (the Local Plan) policy and section of the National Planning Policy Framework as the appeal proposal. However, while reference is made to the bland design that is not reflective of local character, much of the concerns expressed in the reason for refusal for the previously refused scheme relate to the scale and the limited space between the dwellings resulting in an overly dominant and cramped form of development.
5. Based on the submitted evidence, the appeal proposal differs from the previously refused scheme. The block of flats has been reduced from three to two storeys, and the row of three terraced houses and bungalow has been replaced with two bungalows, representing a reduction in the number of units proposed and scale of the development. It does therefore appear that the

appellant sought to address the concerns about an overly dominant and cramped form of development. Furthermore, the concerns about effect on the character and appearance of the area is a matter of judgement.

6. The second reason for refusal for the previously refused scheme relates to the effect on the living conditions of neighbouring residents. The same Local Plan policy is referred to for the previously refused scheme and this appeal proposal. The reason for refusal for the previously refused scheme refers to the effects on living conditions arising from the scale of that development and that the access road would have an adverse effect by virtue of the disturbance from vehicular movements. The second reason for refusal for this appeal proposal refers just to the disturbance caused by the access road. I do not consider that the appellant has acted unreasonably in considering that a reduction in the scale of the development could have addressed the concerns of the Council regarding the effect on the living conditions of nearby residents, notwithstanding that I have come to the same conclusion as the Council on this matter.
7. The appellant has sought to address the issues raised by the Council on the previously refused scheme. Furthermore, although the appellant's appeal statement is brief, it sets out a number of points as to why he considers that the appeal proposal complies with the relevant Local Plan policies.
8. I appreciate that the appellant sought to address the conflicts with the two Local Plan policies raised by the previously refused scheme by amending the proposal rather than engaging in pre application discussions to try and reach a solution. There are clearly benefits from applicants seeking pre application advice on their proposals, including cases such as this where a scheme has been the subject of a previous refusal of planning permission. However, I do not consider that a lack of engagement with the pre application process would amount to unreasonable behaviour.
9. For the above reasons, I find that in pursuing an appeal on the basis of disputing the Council's reasons for refusal does not amount to unreasonable behaviour.
10. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

F Wilkinson

INSPECTOR