



Costs Decision

Site visit made on 20 June 2023

by A J Sutton BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2023

Costs application in relation to Appeal Ref: APP/N1920/W/22/3305764 Land rear of 5 - 23 Cobden Hill, Radlett, Hertfordshire WD7 7JL

- 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 Mrs J Bichard for a full award of costs against Hertsmere Borough Council.
 - The appeal was against the refusal of planning permission for alterations to No 15 Cobden Hill; erection of 8 x 3 bed dwellings with garages and parking spaces; new vehicular and pedestrian access drive; landscaping and all ancillary works.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) sets out that irrespective of the outcome of an appeal, costs may only be awarded where a party has behaved unreasonably, in either a procedural or substantive way, which has directly caused another party to incur unnecessary or wasted expense in the appeal process. Examples of unreasonable behaviour include lack of cooperation, failure to adhere to deadlines and preventing or delaying development which clearly should be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
3. The PPG advises an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
4. The applicant contends that the Council unreasonably delayed the determination of the proposal for much needed housing, which should have been permitted without the need for an appeal. They also set out the events and timeline that occurred over the two year period taken to determine the proposal.
5. The applicant states that the Council's planning team were supportive of the proposal at the pre-application stage. Although I note the principle of development was identified as being acceptable at that stage, issues that would later be the basis of the Council's reasons for refusing planning permission were largely raised at that stage, most notably the impact on the character of the area which is a conservation area. In any event, the Council is not bound by comments made at the pre-application stage; nor is it bound by officer recommendations of approval.

6. The evidence submitted also shows that the applicant was provided with an opportunity to address issues raised during the application stage. As this led to significant changes to the original proposal it was reasonable for the Council to re-consult on these revisions. This additional consultation appeared to significantly impact on the timescale for determining the proposal. Moreover, as acknowledged by the applicant, the application was considered during the Pandemic, and this caused further delay to the process.
7. The proposal was dealt with by three different officers. The first change was as a result of the officer leaving to take up another post and this is a matter that the Council has limited control over. There is limited information about the final change of staff, but I find no substantive evidence that the Council has behaved unreasonably in this matter. Moreover, it is reasonable to allow a period for the new case officers to become familiar with a new case, albeit I appreciate this unfortunately impacts on timescales. I also note although the final case officer may have had different views from the original officer, he did not raise any issue that the applicant had not already been made aware of at the pre-application stage of the process. I find no lack of continuity or consistency on the part of the Council in this regard.
8. While a two year period does seem unreasonably protracted, as outlined above, much of the delay can be reasonably justified, and the evidence does not indicate that the Council has acted unreasonably in this regard. Moreover, the Council substantiated its reasons for refusing planning permission, with reference to relevant development plan policies and the National Planning Policy Framework (the Framework). I agree with all the Council's reasons for refusal. In this regard the Council has not delayed development that should have clearly been permitted.
9. The appellant asserts that the issue of locally listed buildings was raised as a new issue a significant time after the application was submitted. However, heritage issues were raised at the pre-application stage and the applicant submitted a heritage assessment in support of the proposal which made reference to these non-designated assets. Moreover, while revisions were made to the proposal and this required additional resources, all the issues raised by the Council during the application process related to sound planning issues directly relevant to the appeal site and the proposal.
10. It is also asserted that the impact of noise from the nearby railway should not have been a reason for refusal as this was a matter that could be dealt with by condition. However, this matter was raised by the Council's environmental health team during the application process. The Framework states that conditions should be kept to a minimum, and only imposed where necessary. Without the noise assessment it was not possible to conclude that conditions were necessary or that conditions would make the development acceptable in the event the impact of noise was found to be unacceptable. Moreover, the Council substantiated its refusal reason with reference to relevant policies. I find that the Council has not acted unreasonably in this regard for this reason.
11. In light of the above, while there were delays in the application process, the Council has not behaved unreasonably in refusing permission in this case. As a result, I find that the behaviour of the Council has not led to the applicant incurring unnecessary or wasted expense in the appeal process.

Conclusion

12. Having considered all submitted evidence and for the reasons outlined above, an award of costs is not justified in this case.

A J Sutton

INSPECTOR