



Costs Decision

Site visit made on 3 May 2023

by N Duff BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2023

Costs application in relation to Appeal Ref: APP/J4423/W/22/3312257 45A Brooklands Avenue, Sheffield S10 4GB

- 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 UK Homes Ltd for a full award of costs against Sheffield City Council.
 - The appeal was against the refusal of planning permission for demolition of existing dwelling and the erection of five detached dwellings with associated landscaping; and improvements to the access.
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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.
3. The application for costs relies to a substantial extent on whether the Council have acted unreasonably by preventing or delaying development which should clearly be permitted. In addition, the application states that the Council has made vague, generalised or inaccurate assertions about the proposal's impact and refusal of planning permission on a ground capable of being dealt with by conditions.
4. Having regard to the delays experienced by the applicant, the Council has confirmed the timeline of events that led to the delays in dealing with the application. These included delays with validation due to missing information, and subsequent inaccuracies with the red line site plan. The appellant has stated that the Council failed to engage appropriately under the duty outlined in paragraph 38 of the National Planning Policy Framework. However, evidence provided by both parties demonstrates that detailed feedback was received by the applicant, and a meeting took place to discuss the scheme, following which a suite of further information was prepared by the applicant. Additional information such as this not only takes the applicant time to collate but also for the Council to review.
5. The Council has confirmed that following receipt of the additional information, the appellant was contacted to advise that the scheme would not be viewed favourably and the applicant was given the opportunity to withdraw the scheme. A decision was issued soon after this point.

6. Therefore, I do not find that the Council acted unreasonably by causing delays or by way of a lack of engagement with the applicant.
7. Having regard to the reasons for refusal and contents of the officer report. The Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence. The Council has assessed the application in line with its policies and has given clear justification and reasons for the decision in the officer's report and decision notice.
8. The applicant contends that the proposed acoustic fence for the access road was not considered in the report of the Council officer. However, based on the information provided, no evidence was provided to demonstrate how this would mitigate against any noise. The onus is not necessarily on the Council to request such information but on the applicant to provide it to demonstrate the effectiveness of the proposed method of mitigation. Notwithstanding this, the feedback shown in the evidence is that the scheme would be unacceptable despite all additional information provided including the details of the acoustic fence. Therefore, to request further information may have resulted in abortive work and further delays for the appellant as the advice was clearly that the development was not able to be viewed favourably by the Council for other reasons.
9. Having regard to biodiversity, the Biodiversity Impact Assessment submitted by the applicant during the application process demonstrates that there would be a net loss of biodiversity on site. Therefore, whilst this matter was not covered in the feedback email provided on 30th August 2022, this matter should not have come as a surprise to the applicant as it formed part of their submissions to the Council. Similarly, the plans show some encroachment into the root protection area of protected trees. Therefore, I do not find that the Council has acted unreasonably by raising these matters in either the officer report or the Decision Notice.
10. Regarding conditions and them not being used to overcome reasons for refusal. I do not find that conditions would have been able to overcome all reasons for refusal as they were related to the overall design and scale of the scheme and the impacts on character and appearance of the area, living conditions of neighbouring occupiers resulting from that overall design and by not adequately mitigating for the loss of biodiversity. Therefore, I do not consider that the Council has acted unreasonably in this regard.
11. The applicant has stated that they have incurred unnecessary or wasted expense in the appeal process. I find that the feedback provided in the email of 30th August clearly sets out reasoning why the scheme would not be acceptable, irrespective of additional information received and gives the applicant the option to withdraw the proposal or proceed to a decision. Based on this I do not find that the Council has misled the applicant with regards to the likely outcome of the application, and has not forced the applicant down the route of an appeal.
12. Further to the reasons set out above, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not occurred and an award of costs is not warranted.

N Duff

INSPECTOR