



Costs Decision

Site visit made on 7 September 2023

by L Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2023

Costs application in relation to Appeal Ref: APP/C2741/W/23/3319070 Site to the rear of 5 Cherry Lane, York YO24 1QH

- 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 J Lee for a full award of costs against City of York Council.
 - The appeal was against the refusal of planning permission for approval of details pursuant to condition No. 2 of planning permission Ref 21/00121/OUT, dated 16 April 2021.
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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. The PPG identifies that unreasonable behaviour includes vague, generalised, or inaccurate assertions which are unsupported by any objective analysis, and failure to produce evidence to substantiate each reason for refusal.
3. The applicant contends that the appeal was unnecessary because the Officer's report alluded to an earlier iteration of the final design, refers to reserved matters beyond those sought, and does not properly justify the inclusion of some elements of the reasons for refusal.
4. Paragraph 5.11 of the Officer's report identifies that some modifications were made to the proposal in an aim to address concerns raised in the previous refused applications concerning design, size, and scale. It acknowledges that these modifications sited it more to the west, and slightly reduced the footprint and the height. However, it further states that *"in terms of design, the house type will however retain an overall almost identical design to the previous application."* Having viewed the layout plans for both of the most recently refused applications on the site, I cannot see that such similarities can be drawn. The report continues at paragraph 5.12 with a design critique that very clearly relates to a superseded courtyard design of the proposed dwelling.
5. The Council therefore did not provide a fully accurate justification for its reason for refusal relating to the form and design of the appeal proposal. This leads me to uncertainty as to whether the Council's findings on landscape character impact are also therefore founded on an incorrect design.
6. Moreover, paragraph 5.12 concludes that the dwelling's *"appearance still differs from that indicated in the outline approval which illustrated a simpler structure of over sailing roof eaves below a hipped roof scale."* Whether or not the

correct design was being referred to here, the outline permission does not restrict the appearance, structure, or roof scale, beyond the specification of a height lower than 9m and its general siting. It is unreasonable that reserved matters of appearance and scale should be judged against aspects only shown as illustrative at the outline.

7. Additionally, the first reason for refusal includes that the proposed dwelling “*is incohesive in appearance with an inappropriate use [of] materials.*” There is no mention of what materials would be more appropriate than those proposed, or a justification as to why they are inappropriate in the context. The Officer’s report paragraph 5.11 simply identifies that the materials are “considered more appropriate” than a previous refusal.
8. Overall, the first reason for refusal is not fully substantiated, and is based on vague, generalised, or inaccurate assertions about a proposal’s impact.
9. With relation to the second reason for refusal, the plans do not show any operations relating to earthworks, terracing, or excavation for retaining walls. The Arboricultural Impact Assessment (AIA) specifically identifies that there would be no level changes within the root protection area of retained trees. The Council acknowledges that the building footprint would be far enough away not to harm any trees. The Officer report does not reference the AIA or Arboricultural Report, or justify why its conclusions should not be accepted. The Council has thus provided no explanation or justification as to why the root protection area of the oak tree would be affected.
10. Furthermore, landscaping and access are reserved matters. Control via conditions such as no-dig methods could be provided at the future reserved matters stage if necessary. The PPG identifies that refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead.
11. As such, I do not find that the second reason for refusal is fully substantiated or supported by objective analysis.
12. Overall, I therefore find that as described in the PPG, unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated. A full award of costs is justified.

Costs Order

13. 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 City of York Council shall pay to J Lee, 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.
14. The applicant is now invited to submit to City of York 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.

L Hughes

INSPECTOR