



Costs Decision

Site visit made on 3 November 2023

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 December 2023

Costs application in relation to Appeal Ref: APP/P3040/W/23/3319093 Chestnut Farm, Chestnut Lane, Barton in Fabis NG11 0AE

- 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 & Mrs J Kent for a full award of costs against Rushcliffe Borough Council.
 - The appeal was against the refusal to grant consent, agreement or approval to details required by a condition of an outline planning permission for the Demolition of existing buildings and construction of a residential scheme of up to 5 dwellings.
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Decision

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

Reasons

2. Paragraphs 16-028-20140306 and 16-030-20140306 of the Planning Practice Guidance (the PPG) advise that, irrespective of the outcome of an appeal, where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
3. Paragraph 16-049-20140306 of the PPG states Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples of unreasonable behaviour include preventing or delaying development which should clearly be permitted, refusing to approve reserved matters for issues that should already have been considered at the outline stage, or could be addressed by conditions, and vague or generalised assertions about the impact of a proposal unsupported by objective analysis.
4. The appellants are of the view the Council has behaved unreasonably because there was no reasonable planning basis for the committee to overturn the officer recommendation and refuse the proposals for the reasons it did. They are of the view the Council has made vague generalised or inaccurate assertions, failed to follow established caselaw, refused to approve reserved matters upon matters that should have been raised at the outline stage, or that could have been addressed by conditions upon a reserved matters consent.
5. The Council is of the view it took into account material considerations in making planning judgements to reach a reasonable decision upon the application before it, so there are no grounds for an application for costs.

6. The Council is perfectly entitled to disagree with officer advice and come to an alternative view, so long as it is well-reasoned on the planning merits of a proposal. The Council's reasons for refusal explain what elements of the scheme it found unacceptable. However, they are vague in stating why those elements of the scheme are unacceptable. Moreover, some of the elements referred to, were required, to be compliant with, and within the specifications of the conditions attached to the outline permission.
7. In the first reason for refusal, unusually, it was not stated which living conditions, or the occupiers of which properties, it alleges would be harmed. Therefore, the reason for refusal is not clear or intelligible. The Council's appeal submission provides rather limited further explanation and more importantly, reasoned justification for the conclusion reached. Though the reserved matters scheme differs from the indicative outline, this is not uncommon, and does not of itself justify refusing permission.
8. The Council was not incorrect to have regard to the living conditions of neighbouring occupiers. However, if it refuses consent on this basis, it must do so for clear justifiable reasons. The scale, height, floor levels and window heights of the dwellings are all compliant with the outline permission. The effects of the terraces and side windows could be mitigated by the officer's suggested planning conditions. For the reasons set out in my decision letter, the proposal would not result in harmful living conditions to neighbouring occupiers and would be compliant with development plan policies.
9. Character and appearance are matters of judgement, but the second reason for refusal also lacks sufficient reasoning. It does not explain how and why the scale, massing and proportions are inconsistent with the village, to such a degree they result in harmful effects. There is little substantive reference to and analysis of, the characteristics of the site location, context, and surrounds to explain its reasoning. Such matters are emphasised in the guidance and advice in the Rushcliffe Design Guide.
10. Some reasoning is given in the Council's appeal submission. While the development might not reflect the agricultural history of the site, the evidence suggests it has been in a mixed commercial use for a considerable number of years. This is also a marked shift from the reference to 'the village' in the reason for refusal. The Council also fails to adequately substantiate why the elements of massing, proportion and scale mean the development would be inconsistent with the site, its surrounds and the village given how varied they are, and given the scheme is consistent with the conditions of the outline permission.
11. The appellants have supplied detailed reasoned analysis and evidence, as to why the scheme is acceptable having regard to all the matters set out in the reasons for refusal. For the reasons set out in my decision letter, I find the scheme acceptable and compliant with development plan policies.
12. For the reasons set out above, the Council has made vague, generalised, and inaccurate assertions about the effects of the proposal, and refused a scheme that should have been permitted having regard to the development plan, national policy and other material considerations. It also refused the scheme based upon matters that could have been addressed by conditions attached to a reserved matters consent. Therefore, the Council has behaved unreasonably

and resulted in the appellants incurring unnecessary and wasted expense in making the appeal. For these reasons 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 Rushcliffe Borough Council shall pay to Mr & Mrs J Kent, 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. Mr & Mrs J Kent are now invited to submit to Rushcliffe Borough 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.

Dan Szymanski

INSPECTOR