



Costs Decision

Site visit made on 21 November 2023

by JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 January 2024

Costs application in relation to Appeal Ref: APP/V2635/W/23/3317933 18 Tuesday Market Place, King's Lynn PE30 1JW

- The application is made under sections 78, 322 and Schedule 6 of the Town and Country Planning Act 1990, and section 250(5) of the Local Government Act 1972.
 - The application is made by Gain SPVKL Ltd for a full award of costs against King's Lynn and West Norfolk Borough Council.
 - The appeal was against the refusal of planning permission for the change of use of the former first floor office cloakroom to a studio flat (application ref 22/00033/F).
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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. In 2022 the Council granted planning permission for the former cloakrooms on the second and third floors of this building to change from a duplex to 2 studio apartments, one on each floor (the 2022 decision). In coming to that decision it therefore found that proposal did not conflict with Policy DM15 in the *Site Allocations and Development Management Policies Plan* or *King's Lynn & West Norfolk Borough Council Core Strategy* Policy CS08. Then, a few months later, it refused planning permission for the proposal before me, despite it being directly below the units created by the 2022 decision and having the same floor area. This refusal was because the resultant flat would be too small to provide suitable accommodation, and so it was contended it conflicted with the 2 policies cited above.
4. One of the purposes of the costs regime is to encourage local planning authorities to exercise properly their development management responsibilities. Consistency is an important aspect of the planning process, as reaching different conclusions about similar cases can undermine public confidence. Consequently, the PPG advises that Councils are at risk of an award of costs against them if, among other things, they do not determine similar cases in a consistent manner.
5. I consider that the current scheme was a similar case to the 2022 decision, as it was to be of a comparable size to each of those units and would be immediately below them. There is therefore an inconsistency between the permission granted under the 2022 decision and the refusal of the development subject of this application. No particular reason was given for this different decision being reached, other than the current scheme had another case officer

who had regard to the *Technical Housing Standards - Nationally Described Space Standard* (NDSS), which are now contained in the *National Model Design Code*.

6. However, inconsistency does not automatically constitute unreasonable behaviour, and indeed the PPG states only that such behaviour puts the Council 'at risk of' an award of costs. Although I appreciate the need for consistency, to my mind it is not to the benefit of the planning process for unsatisfactory decisions to be replicated solely because of a need to be consistent, as that too could affect public confidence and lead to a sub-standard built environment. However, if permission is refused for a scheme that is similar to one that has been recently approved, the onus is nonetheless on the Council to satisfy an Inspector that the refusal was a reasonable course of action to take. In this instance, although I have had regard to the 2022 decision and the units it permitted, I have found the refusal of planning permission to be appropriate as I too have dismissed the appeal. Therefore, although its decision was inconsistent with that earlier one, I nonetheless consider the Council has not acted unreasonably in dismissing this case.
7. I have no basis to find the Council treated the NDSS as anything more than a material consideration, as it was not cited in the reason for refusal. Reference to those standards though was not inappropriate as they are a material consideration, and the difference between this scheme and what the Government considers to be the minimum standard is appreciable. Indeed, to my mind consistency in the planning process is better achieved in instances of this type by having regard to standards such as those rather than relying on a more subjective approach that appeared to be the basis of the 2022 decision.
8. Reference was also made to the Council being estopped from refusing this proposal, but that is a matter that lies outside of the appeal process. Moreover, it is for the Council to decide what action, if any, it now takes in relation to the 2022 decision.

Conclusions

9. Therefore, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated and an award of costs is not warranted.

JP Sargent

INSPECTOR