



Costs Decision

Site visit made on 15 January 2024

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 March 2024

Costs application in relation to Appeal Ref: APP/P4415/W/23/3326242 Phoenix Court, 67 Blyth Road, Maltby, Rotherham S66 7LF

- 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 M Blum (Phoenix Court Property Management Limited) for a full award of costs against Rotherham Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for raising of the main roof to accommodate four new 2 bedroom apartments.
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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 PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. Council officers recommended the application for approval. Whilst elected members are not duty bound to follow officers' recommendations, if a different decision is reached the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and substantiate that reasoning.
5. The applicant's claim is that the Council's planning committee in refusing the application against the advice of its professional officers failed to have regard to the evidence before it showing that the proposal would not adversely affect the character and appearance of the area, including 3D visualisations, a materials schedule and the existence of permitted development rights to otherwise alter the appearance of the building. The appellant also points to the unavailability of a recording or detailed minutes of the committee meeting.
6. The Council in response states that the Full Planning Board considered the application, including the written reports and oral comments at the meeting, and determined to refuse the application on the basis of harm to the character and appearance of the area, and that its position is substantiated in its appeal statement.
7. The Council's statement is brief but explains its position by reference to the existing character of the appeal building, the conclusions of another Inspector

in an earlier appeal decision and the specific details of the proposal it considered would be harmful, namely the additional height, changed proportions, proposed gable feature and the resulting prominence the building would have in the street scene. In refusing permission, the Council has referred to conflict with specific development plan policies.

8. Even though I have not agreed with the Council in my main decision, the consideration of the proposal in terms of its effect on the character and appearance of the area involves matters of judgement which encompass necessarily subjective elements. The Council has provided evidence to support its reason for refusal. Based on the information before me, I do not consider that the Council has acted unreasonably in these respects.
9. In terms of the Council's record keeping at the committee, that is ultimately matter for local government accountability outside of the appeal process. I have no firm evidence that these actions were unreasonable in the context of the appeal or that the Council has otherwise failed to adhere to the procedural aspects of the appeal. Therefore, I find no unreasonable behaviour in this respect.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and an award of costs is not justified.

K. Savage

INSPECTOR