



Costs Decision

Site visit made on 30 January 2024

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 29 April 2024

Costs application in relation to Appeal Ref: APP/X1355/W/23/3334300 Park View Upper School and Sixth Form, Church Chare, Chester le Street, Durham DH3 3QA

- 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 Lewis Pendleton, Park View Learning for a full award of costs against Durham County Council.
 - The appeal was against the refusal of planning permission for an Artificial Grass Pitch (AGP) with associated perimeter fencing, LED sports lighting, and hard standing areas.
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Decision

1. The application for an award of costs is allowed in part 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.
3. The PPG points out that 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. It gives the examples of unreasonably refusing planning applications, or unreasonably defending appeals where they make vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. Although Council officers recommended that the planning application be approved, elected members are not duty bound to follow such advice and are entitled to reach a different conclusion. This was not in itself unreasonable.
5. The applicant provided technical reports in support of the proposal with regards to all four issues where the Council subsequently found that the planning application warranted refusal.

Noise

6. The Council did not challenge the findings of the applicant's Noise Impact Assessment report. The Council's assertion that the proposed noise mitigation would not sufficiently reduce noise disturbance was not explained in any detail nor supported by any analysis of why or how the mitigation measures would be unsuccessful.

7. It could be considered unhelpful that the conclusions of the Council's Nuisance Action Team were set out in terms of 'statutory nuisance', for which the test may be different and considered under different legislation than the consideration of a planning application. Nevertheless, the Council did not expand on what the significance of such a difference would be, nor how any subtleties may mean that material harm to neighbours' living conditions would result. There was no objective analysis evident and the Council's stance was vague in this regard. This was unreasonable.

Light

8. The Council noted that there would be some light spill affecting the nearest residential properties but failed to take account of the findings of the applicant's technical Lighting Report. The Council's main objection appeared to be that there would have been some light spill without assessing the extent of it nor why any effects identified would be harmful.
9. Their argument did not proceed beyond identifying that there would be a difference between the current unlit (or relatively unlit as they did not explicitly take the existing flood lights adjacent to the School into account) and proposed situation. The Council did not evaluate the extent or implications of the effect on occupiers of nearby houses. It only considered the potential mitigation of proposed landscaping and not the proposed hours of use nor the potential for a lighting management plan which could have been required by way of a planning condition. These were vague and generalised assertions and not substantiated by objective analysis including any evidence that the details of the applicant's lighting report had been scrutinised and evaluated, as they had been done by the Council's Nuisance Action Team at the application stage. This was unreasonable.

Heritage

10. The Council was required to consider the balance of any less than substantial heritage harm against any public benefits of the proposal by both the National Planning Policy Framework and its development plan policy. The Committee Report attempted to identify and gauge the extent of any heritage harm such that the subsequent balance could be understood. However, its Appeal Statement did not encapsulate or adequately quantify the harm so that its conclusion that the heritage harm would not be outweighed by public benefits was not adequately explained and was unsupported by an analysis of the harm to significance.
11. The Council advise that the public benefits arising from the development would be tempered by the extent of that area of the County where there is a shortfall of AGPs. Whilst they point to the importance of considering how AGPs might be distributed and take account of existing and future developments they provided no details of what or where those developments which might make alternative provision might be. This does not amount to an objective analysis that might reasonably conclude the public benefits arising from the proposal would be reduced should the identified shortfall be likely to be secured elsewhere. This was unreasonable.
12. The Council also raised an objection with regard to the proposal's effect on other designated heritage assets at appeal stage, namely the Chester-le-Street Conservation Area and a scheduled monument in the vicinity of the listed

Church, whereas the refusal reason referred only to effects on the setting of the Church. This too was unreasonable, albeit the applicant's final comments do not show that they engaged in any significant work and therefore expense in rebutting this line of argument.

Highways

13. In this case I found that the development would have unacceptable effects in respects of highways and parking which would not be satisfactorily mitigated against. Whilst the Council did not make the distinction between highway safety and other adverse effects of parking and vehicular traffic, its evidence in its Appeal Statement in this respect did rely in part in an analysis of the applicant's Transport Statement and Highways Technical Note, and the assumptions they were made upon. Furthermore, the Council did make reference to the findings of a report prepared on behalf of interested parties which challenged aspects of the applicant's Transport Statement. Therefore, although it did not provide evidence to back up its assessment that highway safety would be materially harmed, as opposed to other adverse effects, its arguments were not vague or generalised and it did not act unreasonably in respect of the highways issue.

Conclusion

14. Although not specified, the applicant has clearly incurred the expense of engaging a professional planning consultant in support of the appeal which in part was related to contesting the noise, light and heritage reasons of the Council's decision.
15. I therefore find that the Council behaved unreasonably, and caused the applicant to incur unnecessary or wasted expense in the appeal process, as described in the PPG, in relation to the Council's reasoning and defence of refusal grounds 2, 3 and 4, but not ground 1.
16. A partial award of costs, to cover the expense incurred by the applicant in contesting those three grounds of the Council's reasons for refusal, is therefore justified.

Costs Order

17. 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 Durham County Council shall pay to Mr Lewis Pendleton, Park View Learning, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in challenging refusal grounds 2, 3 and 4 set out on the Council's decision notice, that is grounds relating to effects of noise, light and upon the significance of designated heritage assets; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is now invited to submit to Durham County 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.

Geoff Underwood

INSPECTOR