
Costs Decision

Site visit made on 18 June 2024

by **Andrew McCormack BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7 August 2024

Costs application in relation to Appeal Ref: APP/J3015/W/23/3331913

Former Lynncroft Primary School, Lynncroft, Eastwood, Nottinghamshire NG16 3FZ

- 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 Avant Homes Central for a full award of costs against Broxtowe Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for construction of 104 dwellings (reserved matters of access, landscaping, layout and scale – Planning Ref: 20/00844/OUT).
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Decision

1. The application for a full award of costs is refused.

Reasons

2. The Planning Practice Guidance 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 applicant claims that the Council has acted unreasonably with respect to the substance of the matter under appeal in relation to:
 - preventing or delaying development which should, in the applicant's view, clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - a failure to produce evidence to substantiate each reason for refusal on appeal; and
 - vague, generalised or inaccurate assertions about the proposal's impact which are unsupported by any objective assessment.
4. Planning is subjective and the Committee Members of the Council are entitled to reach a decision that is not in accord with an officer recommendation, providing that the reasons for that decision are fully justified and regard has been had to the relevant policies.
5. At the Planning Committee meeting on 5 July 2023, when the proposed development was first considered by Committee Members, the applicant was given the opportunity to alter the scheme in response to the specific views and concerns expressed by Members at that time. The determination of the application was therefore deferred to allow the applicant the opportunity for further work to be undertaken. This was a reasonable approach adopted by the Council. Whilst amendments were made, the Committee concluded that these did not fully address their concerns in relation to overlooking and impact on neighbour amenity when the application was brought before the Committee again on 6 September 2023. These are the matters which had led to the deferral of the application. As a result, the application was refused for the reason stated on the Decision Notice.

6. The applicant argues that the Council provided no detailed rebuttal to the Daylight, Sunlight and Overshadowing Assessment in providing its reason for refusal, other than the assessment did not provide a 'whole year' assessment to include the winter months. I note that the applicant has provided an explanation and reasoning in their final comments in the appeal process setting out that, in their view, further information was provided to the Committee prior to making its decision. Notwithstanding this, the Committee assessed and determined that the proposal was unacceptable based on the evidence provided.
7. The applicant also asserts that the Council failed to provide evidence to substantiate its reason for refusal throughout the appeal and has made vague, generalised and inaccurate assertions about the proposal's impact. This, it is argued, has resulted in the Council preventing and delaying development on an allocated site within an extant outline consent that should clearly be permitted.
8. It is for the applicant to provide sufficient appropriate evidence to support the proposed development. It is not for the Council to provide a fully comprehensive counter-assessment of the evidence provided in support of a proposal. Rather, it is to assess and determine an application in the context of that submitted evidence, with regard to the development plan, national policy and other material considerations. I am satisfied that the Council has done so in this case.
9. From what is before me, I find that the Council reasonably exercised planning judgement in its assessment of the proposed development presented to the Committee. This specifically relates to the Council's concerns about the proposed level of planting to provide year-round screening to successfully mitigate overlooking issues and a lack of a full year-round assessment regarding the impact on sunlight. As the amendments presented did not, in the Committee's view, address the concerns raised, I find it entirely reasonable and justified that on that basis the Council refused the application.
10. In addition to the amendments not addressing the Committee's clearly set out concerns, it is evident that the proposal attracted a significant number of objections from nearby residents. The Council is quite reasonably expected, indeed required, to consider these objections and concerns in determining the application. In this case, the Committee clearly took these into account in its assessment. In doing so, the Committee exercised its planning judgement and made a reasonable and justified decision in that context, based on the evidence available at that time.
11. In light of these matters, having provided the applicant with the opportunity to amend the proposal, the Committee carried out a fair and balanced assessment of the proposal which, in its judgement, did not address the clear concerns raised and led to the refusal of planning permission. Furthermore, the Council applied the relevant policies of the development plan, national policy, and considered other material considerations to determine the planning application and in that overall context, reasonably justified its reason for refusal.
12. For the above reasons, whilst I have allowed the appeal, I find that the actions of the Council were not unreasonable. As such, I conclude that unreasonable behaviour unduly preventing or delaying development that should otherwise be permitted, and resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Consequently, the request for a full award of costs is refused.

A McCormack

Inspector