



Costs Decision

Site visit made on 5 January 2021

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th January 2021

Costs application in relation to Appeal Ref: APP/X1925/W/20/3258611 Land Rear of 33 Wymondley Road, Hitchin, Hertfordshire SG4 9PN

- 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 Danny Taylor for a full award of costs against North Hertfordshire District Council.
 - The appeal was against the refusal of planning permission for development described as 'erection of one dwelling with ancillary access and parking area Land Rear of 33 Wymondley Road'.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and where the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process.
3. It goes on to explain that local planning authorities are at risk of an award of costs if they behave unreasonably with regard to procedural matters or to the substance of the matter under appeal. The application for a full award of costs is made on both procedural and substantive grounds.
4. There was a delay in the registration of the planning application subject of the current appeal. The Council advise that this arose as a result of a misunderstanding over whether an appeal had been made against refusal of a previous application. I acknowledge the applicant's frustration at the delay and that it led to him seeking professional advice. However, from the information before me, I have no clear reason to find that the delay was other than a result of a genuine misunderstanding or that the Council sought to deliberately or unreasonably hold up the progress of the application. In addition, while the power to decline to determine overlapping applications under Section 70B of the Town and Country Planning Act 1990 is discretionary, I have not been provided with substantive evidence demonstrating that the Council exercised this power improperly.
5. Moreover, the PPG notes that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, and it has not been shown how the delay has resulted in such expense. Similarly, the applicant's dissatisfaction with the outcome of an earlier planning application and the progress of complaints made to the Council do not alter my assessment of the

- grounds of the current application which must be considered on its own merits and with specific regard to the costs incurred in connection to the related appeal.
6. Informal advice offered before an application is made is given without prejudice and cannot pre-determine the outcome of a subsequent application, which must take account of all material factors. The Council provided pre-application advice that an application for a dwelling on the site could be supported, but this was predicated on a robust noise assessment and mitigation. To my mind, the requirement for a robust assessment is clear that the content of any such submission would need to be considered. A finding of no harm to the character and appearance of the area is also said to be subject to suitable design. I have not been provided with details of the information that was before the Council, but it is not therefore clear that the advice was given with regard to details which would have enabled more comprehensive assessment and advice on the acceptability of development of the form specifically proposed by the current appeal. Although the pre-application advice was not referred to within the Council's report on the application and its value is questioned by the applicant, I therefore have no firm basis to conclude that the informal advice given was misleading so as to amount to unreasonable behaviour.
 7. I do not doubt that the applicant took steps to work with the Council and address concerns. However, even if I were to agree that the statement on the decision notice suggesting that advice to the applicant was ignored amounted to unreasonable behaviour, it has not been demonstrated how this has led to unnecessary or wasted expense in the appeal.
 8. The Council concluded that the appeal scheme addressed most of the reasons for refusal of previous proposals on the site, but that does not mean that the remaining concerns were insignificant or without basis. Nor just because they cover a fairly narrow range of impacts relating only to living conditions does it mean that it was unreasonable for the Council to refuse permission in light of these concerns. I also find no compelling evidence to suggest that it was unreasonable or improper for the application to have been determined under powers delegated to officers rather than by Committee, or that the Council's planning judgement was compromised.
 9. The assessment of the effect of overlooking is essentially a matter of planning judgement. While the applicant disagrees with the Council's conclusions, I consider that these are adequately explained within its evidence, and I do not find that its position on this matter was unreasonable or unsubstantiated.
 10. The appeal proposal was accompanied by a 'Noise Assessment Report' (NAR). The NAR is a fairly brief document, much of which comprises details of guidance around the consideration of noise impacts. As highlighted within my appeal decision, it provides little in the way of objective analysis of existing background or likely future noise levels which may be experienced by occupiers neighbouring the appeal site. Nor does it clearly demonstrate that these occupiers would not experience a change from their particular existing situation, or that effects would be of no significance. Irrespective of whether traffic movements would be similar in number to other properties, it is also not clear from the submitted information that the relationship of neighbouring dwellings with the access would be directly comparable to examples cited by the applicant. Accordingly, while I note that the NAR was prepared by acoustic

- consultants, I do not find that it offers a robust assessment of the likely effects of the proposal which the Council's pre-application advice recommended.
11. The PPG confirms that the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. The Council's Environmental Health Officer (EHO) considered the NAR and did not raise an objection to the proposal. However, the EHO is a consultee, and in determining the application, the Council was required to take into account all relevant material considerations. As my decision records, these include a previously dismissed appeal on the site where an Inspector determined that noise and disturbance associated with the access to the site would result in harm to neighbouring occupiers. As set out within my decision, I agree with the Council that the NAR does not offer robust additional information to that available to the Inspector in the previous appeal so as to overturn the conclusion of harm. I also note a subsequent planning application that was submitted with the NAR, but which was refused by the Council with similar concerns. Given the above, I therefore find that there was adequate justification for the Council to reach a different conclusion to the EHO with regard to whether or not the effects of the development would be acceptable.
 12. The Council's evidence does not explicitly consider advice within the National Planning Policy Framework that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. Nevertheless, my decision sets out the reasons why I do not consider that it would be appropriate to rely on planning conditions to mitigate identified harm in this case. Accordingly, I do not find that this led the applicant to incur unnecessary or wasted expenditure.
 13. The applicant has pointed to examples of backland development near to the site, and at appeal stage provided additional examples of developments in Luton. However, it was entirely proper for the Council to take into account the specific circumstances of the appeal site. From the information before me, the examples cited by the applicant are not directly comparable to the appeal site, including in respect of their relationship with neighbouring properties. I do not therefore find that they demonstrate an inconsistent approach by the Council.

Conclusion

14. I therefore find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, for the reasons given above, the application for a full award of costs is refused.

J Bowyer

INSPECTOR