Costs Decision

Hearing held on 8 July 2008
Site visit made on 8 July 2008

by Wenda Fabian BA Dip Arch RIBA IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

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Decision date:
1 August 2008

Costs application in relation to Appeal Ref: APP/H0738/A/08/2066786 land adjacent to 1 Manor Place, Off Bishopton Road West, Fairfield, Stockton on Tees TS19 7HF

- 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 Fairfield & District Association for a full or partial award of costs against Stockton-on-Tees Borough Council.
- The hearing was in connection with an appeal against the refusal of planning permission for demolition of existing building and construction of 8 no apartments with associated car parking and external works.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for the applicant

1. The applicant is a charitable trust which is virtually penniless. The Trustees are under a statutory duty to minimise costs. It was inappropriate and wrong of the planning committee to over-ride the advice of the planning officer who recommended approval of the proposal. This amounts to unreasonable behaviour and full costs should be awarded against the Council.

The Response by Stockton-on-Tees Borough Council

2. The Council's planning committee did not disregard the planning officer's report. In fact it agreed with concerns raised in the officer's report to committee in relation to the density of the proposal and the consequent effect within the constraints of the site, on scale and massing. This objection could not have been overcome by the use of conditions. The planning committee considered the proposal seriously and only reached a decision after carrying out a site visit – it does not make a site visit for every application. It reached its decision on the basis of relevant policy considerations and did not act unreasonably.

Conclusions

3. I have considered this application for costs in the light of Circular 8/93[1] and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

[1] Department of the Environment Circular 8/93 – Awards of Costs Incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings

4. From the submissions it is apparent that the application for costs is made under paragraphs 7 and 9 of Annex 3 of the Circular. Paragraph 7 sets out that a planning authority should not prevent, inhibit or delay a development which could reasonably have been permitted, in accordance with the development plan. Paragraph 9 states that a planning authority is not bound to adopt the professional or technical advice given by their own officers, but they will be expected to show that they had reasonable planning grounds for taking a decision contrary to such advice and they should be able to produce relevant evidence to support their decision in all respects.

5. The Council's case included a detailed analysis of the proposal and of the character of the site surroundings and gave reasons why, in the Council's view, the design would not fit in this context. However, this related mainly to an analysis of the design of the illustrative proposal submitted, in terms of height bulk and massing, which was not the subject of the application – layout, scale, appearance and landscaping were matters reserved for a future detailed application, only access was not reserved. As required by Circular 01/2006[2], use, amount of development, indicative layout and scale parameters were set out in the outline application and the accompanying Design and Access Statement (DAS). Whilst I have sympathised with the Council's assessment of the illustrative scheme, as set out in my appeal decision, it could reasonably have been allowed, subject to the usual reserved matters conditions and related to scale parameters set out in the DAS.

6. The Council's reason for refusal also related to the living conditions of residential occupants in terms of outlook. Although submitted after the main application drawings, the appellant provided a context section prior to the Council's decision that illustrated the height of the proposal (as defined by the DAS) relative to its surroundings. This reinforced information, available from the outset, in respect of the size and scale proposed relative to adjacent buildings, on the basis of which the Council's planning officer had made a favourable assessment and with which I have found no reason to disagree. The Council produced little evidence in this respect; it asserted in its submissions that the scale and height of the development would adversely contrast with that of the adjacent dwellings, without demonstrating why this would be so.

7. It is clear from the submissions that the Council was advised by its officer to grant planning permission for the proposal and in the absence of any substantial evidence for the grounds for refusal, as required by paragraph 9 of Annex 3 to Circular 8/93, failed to take this advice. Consequently the development was prevented when (as I have concluded in my decision) it could reasonably have been permitted in the light of the development plan and other material considerations, as set out in paragraph 7 of the Annex. I find that unreasonable behaviour resulting in unnecessary expense has been demonstrated on both these grounds in respect of the reason for refusal.

8. Turning to the matter of a planning obligation to mitigate the lack of open play space provision within the appeal site; as set out in my appeal decision, it is clear from the submissions and from the hearing that there was a fundamental

[2] Department for Communities and Local Government Circular 01/2006 – Guidance on changes to the development control system

disagreement between the parties on this aspect, which would not have easily been resolved. The need to attend the hearing and represent the appellant's view in relation to the lack of a policy requirement for a financial contribution towards off-site open play space provision could not have been avoided. The hearing was therefore necessary in order to explore the difference over the policy basis for the requirement. As set out in my appeal decision I have found there is a policy basis for the requirement and the proposal could not, therefore, have been allowed in the light of the development plan and national policy. I find that in this respect the Council has not acted unreasonably and has not inhibited or delayed the development as set out in paragraph 7 of Annex 3.

9. I, therefore, conclude overall that only a partial award of costs is justified, in respect of the preparation of evidence for the hearing in relation only to the first two main issues set out in my appeal decision (the Council's main reason for refusal) – the effect on the living conditions in terms of outlook and on the character and appearance of the surrounding area. Costs are not justified in relation to preparation of evidence in relation to my third main issue – the provision of open space for outdoor play – nor in relation to the cost of attending the hearing, which I have found to be unavoidable.

Formal Decision and Costs Order

10. In exercise of my 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 powers enabling me in that behalf, I HEREBY ORDER that Stockton-on-Tees Borough Council shall pay to Fairfield & District Association, the costs of the appeal proceedings limited to those costs incurred in relation to the Council's main reason for refusal, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under section 78 of the Town and Country Planning Act 1990 as amended against the refusal of planning permission for demolition of existing building and construction of 8 no apartments with associated car parking and external works on land at land adjacent to 1 Manor Place, Off Bishopton Road West, Fairfield, Stockton on Tees TS19 7HG.

11. The applicant is now invited to submit to Stockton-on-Tees Borough 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

Wenda Fabian

Inspector

The Planning Inspectorate

Award of appeal costs:

Local Government Act 1972 – section 250(5)

How to apply for a detailed and independent assessment when the amount of an award of costs is disputed

This note is for general guidance only. If you are in any doubt about how to proceed in a particular case, you should seek professional advice.

If the parties cannot agree on the amount of costs to be recovered either party can refer the disputed costs to a Costs Officer or Costs Judge for detailed assessment[1]. This is handled by:

The Supreme Court Costs Office
Clifford's Inn
Fetter Lane
London EC4A 1DQ
(Tel: 0207 9477124).

But before this can happen you must arrange to have the costs award made what is called an order of the High Court[2]. This is done by writing to:

The Administrative Court Office
Royal Courts of Justice
Strand
London WC2A 2LL

You should refer to section 250(5) of the Local Government Act 1972, and enclose the original of the order of the Secretary of State, or his Inspector, awarding costs. A prepaid return envelope should be enclosed. The High Court order will be returned with guidance about the next steps to be taken in the detailed assessment process.

[1] The detailed assessment process is governed by Part 47 of the Civil Procedure Rules that came into effect on 26 April 1999. You can buy these Rules from Stationery Office bookshops (formerly HMSO) or look at copies in your local library or council offices.

[2] Please note that no interest can be claimed on the costs claimed unless and until a High Court order has been made. Interest will only run from the date of that order.