



Costs Decision

Site visit made on 15 January 2018

by **Caroline Mulloy BSc (Hons) DipTP MRTPI**

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

Decision date: 26th January 2018

Costs application in relation to Appeal Ref: APP/H0738/W/17/3185009 42 Junction Road, Norton TS20 1PW

- 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 Gary Hutchinson for a full award of costs against Stockton-on-Tees Borough Council.
 - The appeal was against the refusal of planning permission for the erection of two dwellings (semi-detached) to the rear of 42 Junction Road.
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Decision

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

Reasons

2. The Government's Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Claims can be procedural-relating to the process; or substantive-relating to the issues arising from the merits of the appeal.
3. Examples of substantive claims are set out in paragraph 49 of the PPG and of relevance to the points raised by the applicant in the application for an award of costs include:
 - Preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations;
 - Failure to produce evidence to substantiate each reason for refusal on appeal; and
 - Vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;

Character and appearance and living conditions

4. In relation to the first and second reasons for refusal the applicant considers that the Council has made unfounded assumptions regarding the scale of the development. The photographic comparison in the Council's statement may be rather rudimentary, nevertheless, members made their decision on the basis of the proposed plans and their site visit. Members are not obliged to take the advice of their officers and this in itself does not constitute justification for an

- award of costs so long as the reasons for refusal are precise and the justification for the refusal is clear.
5. The Council's case in relation to the character and appearance of the area and over-development is limited but understandable. Reasons for refusal number 1 and 2 clearly identify the harm which it considers would arise from the development and refers to the relevant policies of the development plan. These matters are elaborated upon in the Council's statement.
 6. Similarly, the Council's case in relation to the effect of the development on neighbours was adequate, if brief. The decision notice adequately identifies the properties affected and says that the development would have an adverse impact on privacy and amenity. These matters are elaborated on in the appeal statement. Whilst it is unfortunate that reason for refusal 3 identifies the incorrect supplementary planning document/guidance, the pertinent guideline of a minimum separation distance of 21m to be provided between the main habitable room windows on facing residential properties is, nevertheless, the same and this is the basis upon which members considered the application.
 7. The applicant draws attention to the height of the proposed dwellings in relation to surrounding properties with particular reference to levels within the appeal site. However, neither cross sections nor elevations of the street were provided with the application to illustrate the relative heights of the existing and proposed development and as such I consider that there was scope for interpretation on this matter.
 8. Furthermore, a large element of judgement is required in making a planning decision where the visual effect of the development or its effect on its neighbours is at issue. I consider that in this case there was reasonable scope for alternative viewpoints to be held.
 9. Overall, while I have found the scheme to be acceptable, the Council raised legitimate concerns in an adequate manner. Accordingly it did not act unreasonably in relation to these issues.

Highway Safety

10. The applicant draws attention to the fact that the Council has ignored the professional advice and recommendation of the Council's highway engineer who considered that the proposal would not have an adverse or unacceptable impact on road conditions in Grantham subject to the imposition of conditions. However, members do not have to accept their officer's advice and this in itself does not constitute justification for an award of costs so long as the reasons for refusal are precise and the justification for the refusal is clear.
11. Reason for refusal 4 is clear, precise and clearly identifies the harm which the Council considers would arise from the proposal with reference to the relevant policy of the development plan. The Council's appeal statement expands on this matter.
12. The response of the Council's highway engineer clearly identifies high levels of on-street parking in Grantham Road. Whilst he considers that concerns regarding the proposal could be overcome by the imposition of a condition to restrict the occupancy of the dwellings, members were entitled to take a different view taking into account the existing road conditions.

13. Overall, while I have found the scheme to be acceptable, the Council raised legitimate concerns in an adequate manner. Accordingly it did not act unreasonably in relation to this issue.

Conclusion

14. For the reasons stated, I conclude that the Council has not acted unreasonably. In these circumstances, it is not necessary to consider the question of any expense incurred. Since unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, the application cannot succeed.

Caroline Mulloy

Inspector