The Planning Inspectorate

Costs Decision

Site visit made on 28 August 2015

by Harold Stephens BA MPhil DipTP MRTPI FRSA

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

Decision date: 24 September 2015

Costs application in relation to Appeal Ref: APP/D1780/W/15/3008850
13 Grosvenor Road, Southampton SO17 1RU

- 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 H Singh for a full award of costs against Southampton City Council.
- The appeal was against the refusal of planning permission for the conversion of existing building into 5 flats with associated works, car and cycle parking.

Decision

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

Reasons

2. *Planning Practice Guidance* (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, with regard to procedural or substantive matters, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The Appellant has stated that the Council behaved unreasonably by persisting in objections to a scheme or elements of a scheme which an Inspector has previously indicated to be acceptable. It is argued that it is not unreasonable for members of the Planning Panel to arrive at a different conclusion to the Inspector in the previous appeal, nor indeed its officers, provided that the planning refusal has been properly considered. However, in this case the minutes of the Planning Panel provide very little information as to what was discussed and why it was decided to overturn the officer's recommendation and refuse permission. No clear reasons are given for this. Bearing in mind the conclusions reached by the Inspector in the 2013 Appeal Decision, the case officer's clear and well reasoned report and the advice provided by the Council's Solicitor to the members of the Planning Panel at the meeting, there are clear and irrefutable reasons in this case why permission should not have been refused on the grounds of harm to the amenity of neighbours and the character of the area (RFR1).

4. Furthermore, although the Council responded relatively swiftly in confirming that it would not be offering any evidence in respect of RFR2 following an exchange of emails, the Appellant still incurred expense in soliciting this response. It was also necessary to outline the background to this issue in the Appellant's main statement even though RFR2 was no longer an issue. The Appellant has had to respond to letters of objection from interested persons

and the HRA in relation to parking. It was also necessary to respond to RFR2 which required the Appellant to enter into a planning obligation. This has been shown not to accord with the law or relevant national policy in the NPPF and comprises unreasonable behaviour. The inclusion of RFR2 was an error and it has resulted in the Appellant incurring costs in preparing for this appeal. It is not unreasonable for the Appellant to seek to recover these costs.

5. The Council states that the application was refused at the Planning Panel meeting on 28 October 2014. Whilst the officer recommendation was on balance to approve the application this was overturned by members of the Planning Panel. This is possible where the Panel attaches differing weight to the associated merits and circumstances of the case. This in itself does not constitute unreasonable behaviour but reflects the democratic nature of the planning system. The Council contends that it is not unreasonable behaviour to arrive at a different conclusion to the Inspector in a previous appeal or indeed to that in the officer's report provided that the planning refusal has been properly considered.

6. The Council argues that the 2013 Appeal Decision was properly assessed as the appeal decision was set out in the officer's report to the Panel. The decision was further scrutinised by a barrister appointed by the HRA and this opinion formed an additional material consideration in the case and one to which the Panel attached due weight. The Panel agreed with the findings of the HRA's barrister and disagreed with the officer's recommendation. The Panel felt that the proposal would lead to harm to both the living conditions of neighbouring residential occupiers and to the character of the area and that this harm outweighed the findings of the previous Inspector and its own planning officer. As such, the Council has not acted unreasonably in relation to RFR1.

7. Although RFR2 is not being defended, the Council does not accept that the Appellant has had to waste unnecessary time or money as his agent (Max Holmes) agreed to the imposition of a legal agreement restricting permits in order to address previous concerns. The Appellant was also advised ahead of the appeal that, taking further legal advice, RFR2 would not be defended at this appeal. The Council does not accept that it has acted unreasonably in refusing the scheme contrary to officer advice. The Council's refusal is based on sound planning merits taking into account the development plan and all material considerations.

8. In my view, it was reasonable for the Council to come to the decision that it did because if the development was allowed as proposed it would not comply with policies in the development plan. The Planning Panel is within its rights to disagree with a previous Inspector's decision and an officer's recommendation if the reasoning is sound and other material considerations dictate. The 2013 Appeal Decision was properly assessed as it was set out in the officer's report to the Planning Panel and the decision was further scrutinised by a barrister appointed by the HRA. The barrister's opinion formed an additional material consideration in the case and one to which the Panel was entitled to attach due weight.

9. Moreover, I note that the Panel felt that in the 2013 Appeal Decision the Inspector did not set out clearly her reasoning behind her conclusions and made assumptions that were not based upon fact, particularly with regard to

how the existing and proposed building could and would be occupied. The Panel agreed with the findings of the HRA's barrister and disagreed with the officer's recommendation. The Inspector's decision and officer's recommendation are material considerations and both have been taken into consideration ahead of the planning refusal. In this case, the Panel felt that the harm arising from the proposal outweighed the findings of the 2013 Appeal Inspector and its own planning officer. The Council did not act unreasonably in relation to RFR1.

10. With regard to RFR2, it is clear to me that the reasoning behind the imposition of the s106 legal agreement was agreed during the application stage. The Appellant's agent agreed that in order to address the previous Inspector's concerns it was prudent to restrict permits to new occupants to prevent concern over on-street parking. That was a negotiated position with the Appellant's agent but it no longer forms part of the appeal `offer' in the light of the Appellant's further submissions and so the Council correctly decided not to defend RFR2. The Council did not act unreasonably in relation to RFR2.

11. Moreover, as the Council advised the Appellant that it would not defend this issue any further I consider that there was no additional cost incurred in respect of the appeal. The Appellant was advised as soon as practically possible following legal advice. In my view, the onus was on the Appellant to demonstrate that the parking issues had been resolved in order to address the 2013 Appeal Decision. The Appellant sought to partly achieve this by agreeing to enter into a s106 Agreement so this does not comprise unnecessary expense. It is noteworthy that notwithstanding the fact that RFR2 was not defended, the parking issue forms part of RFR1 and therefore I consider that no additional work was undertaken other than to support the Appellant's general case following the previous Inspector's decision.

12. The development was not one that clearly should have been permitted having regard to relevant development plan and national policies and other material planning considerations. Paragraph 050 of the PPG states that "where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application."

13. Taking all of these matters into consideration it is clear to me that the Council did not behave unreasonably. I conclude therefore that unreasonable behaviour resulting in unnecessary expense, as described in the PPG has not been demonstrated. An award of costs is not justified.

Harold Stephens

INSPECTOR