



Costs Decision

Site visit made on 16 November 2012

by Stephen Roscoe BEng MSc CEng MICE

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

Decision date: 21 January 2013

Costs application in relation to Appeal Ref: APP/G3110/A/12/2179978 Land to the Rear of 82, 84 and 86 Windmill Road

- 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 Neil Gorton, Haseley Homes Ltd for a full award of costs against Oxford City Council.
 - The appeal was against the refusal of planning permission for the construction of 2 three bedroomed dwellings and 1 two bedroomed dwelling in a terraced block with bin and cycle stores.
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Decision

1. The application is allowed.

Reasons

Unreasonable Behaviour

2. Circular 03/2009¹ advises that, irrespective of the outcome of the appeal, costs may only 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. Paragraph 29 of the circular advises that, if a planning authority fails to determine like cases in a like manner (such as to impose a spurious additional refusal reason on a similar scheme to one previously considered by the authority and where circumstances have not materially changed), then this may lead to an award of costs against the authority.
4. In this case, the Council refused planning permission for five dwellings on the appeal site, with more bedrooms than included in the appeal proposal, less than four months before its refusal relating to the appeal proposal. The five dwelling scheme would be similar to the appeal proposal, include the same two garages in a nearby garage block and result in more trips to and from the site than would be the case with the appeal proposal. The Council's only reason for the refusal of the appeal scheme, which related to the inadequacy of the parking arrangements including the small size of the garages, was not however part of its refusal of the five dwelling scheme.
5. The nature and size of the garages would have been readily apparent from an inspection of the site. The Council argues that garage measurements, so that the garage size could be compared against the standards of the Highway

¹ Circular 03/2009: Costs Awards in Appeals and Other Planning Proceedings

Authority², were not available when the five dwelling scheme was refused. It also argues that the substandard size of the garages was not raised by Councillors at that time. These matters are however indicative of a change in the actions of the Council and not a material change in the circumstances of the case. There thus has been no material change in circumstances between the determinations.

6. The Council's refusal reason for the appeal proposal is therefore spurious and the appeal proposal has not been determined in a like manner to the five dwelling scheme. The applicant has therefore been denied a reasonable opportunity to address the harm identified by the Council in a previous refusal by submitting a subsequent application. In view of all of the above points, the Council's refusal of the appeal proposal on this basis therefore represents unreasonable behaviour which conflicts with the guidance in the circular.
7. The existence of the recent five dwelling refusal also represents a material consideration to which the Council should have had regard. Its disregard for this recent refusal, in terms of consistency, has delayed development which should clearly be permitted in conflict with paragraph B15 of the circular. The disregard for the recent refusal also fatally undermines the Council's planning grounds, and renders them unreasonable in terms of consistency, in conflict with circular paragraph B20.
8. There is however no requirement on the Council to provide reasoned evidence in support of its decision prior to the submission of its appeal statement and, in this case, the Council's statement was sufficiently detailed. The applicant had the opportunity to respond to the Council's statement at final comments stage, and the fact that any work had been carried out earlier was the choice of the applicant. The Council's actions in this regard were therefore reasonable in the context of paragraphs B4, B16 and B23 of the circular. The absence of any conflict with these paragraphs does not though reverse the unreasonable behaviour that conflicts with the advice in paragraphs B15, B20 and B29 of the circular and led to the refusal.
9. I therefore consider that the Council has acted unreasonably in relation to this appeal.

Unnecessary Expense

10. The applicant has incurred the expense of preparing, submitting and attending the appeal, and the Council's behaviour in the above matters that led to the appeal has been found to be unreasonable. I therefore consider that the applicant has incurred unnecessary expense in the preparation, lodging and conduct of the appeal.

Conclusion

11. I thus find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated in relation to the appeal. A full award of costs is therefore justified.

² Oxfordshire County Council: Transport for New Developments: Parking Standards for New Residential Developments

Costs Order

12. 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 Oxford City Council shall pay to Mr Neil Gorton, Haseley Homes Ltd the costs of the proceedings, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concern an appeal more particularly described in the heading of this decision.
13. The applicant is now invited to submit to Oxford City 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 Senior Courts Costs Office is enclosed.

Stephen Roscoe

INSPECTOR

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