



Costs Decision

Hearing held on 14 July 2009

Site visit made on 14 July 2009

by **Anthony J Wilson BA MA DipLA MRTPI**

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

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Decision date:
3 August 2009

Costs application in relation to Appeal Ref: APP/W0734/A/09/2100359 25 Pine Hill, Coulby Newham, Middlesbrough, TS8 0RW

- 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 E J Brady for a full award of costs against Middlesbrough Borough Council.
- The Hearing was in connection with an appeal against the refusal of the Council to grant planning permission for the erection of a 1.8m boundary enclosure, comprising a brick wall with wrought iron railings above.

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

The Submissions for Mr E J Brady

1. Following the advice in paragraphs 7, 8 and 9 of Annexe 3 of Circular 8/93, it is respectfully requested that full costs are awarded to the applicant as it is considered that the local planning authority (LPA) has behaved unreasonably, throughout the application and the appeal, on the grounds that it has:
 - 1) not given the appropriate weight to the relevant material planning considerations in favour of this development;
 - 2) not given appropriate weight to the analysis, conclusions and recommendations of its Planning Unit;
 - 3) failed to correctly balance in favour of the benefits of this scheme against mainly inconsequential and irrelevant objections voiced throughout the application and appeal processes;
 - 4) given undue and inappropriate weight to out-of-date design guidance which has no statutory weight, has not been consulted upon, and has almost zero weight, if any, as a material planning consideration;
 - 5) been unduly and unreasonably swayed by the opposition of local residents despite the case made in the application and this appeal, the relevant material planning considerations and the appeal decision cited; and
 - 6) not withdrawn their opposition to this scheme despite the wealth of argument in favour of it raised through this appeal process.
 2. The LPA's unreasonable behaviour in refusing planning permission has caused the applicant to incur and waste expense unnecessarily in responding and appealing this proposal; and the grounds of appeal submissions explain in detail why the LPA's stance is unreasonable in that:
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- (a) the LPA's interpretation of policies in the Decision Notice is inappropriate and subjectively unbalanced;
 - (b) the submission of this appeal has meant extra work over and above what should have been required to gain a planning permission (ie just a planning application); and
 - (c) any impact on amenity is acceptable; to conclude otherwise, as the LPA continue to do, is unreasonable.
3. The unreasonable conduct in subjectively refusing this application, and continuing to resist this proposal through the appeal process, has caused the appellant and agent to incur and waste expense unnecessarily, because it should not have been necessary for the matter to be determined by the Secretary of State.

The Response by the Council

4. In response, the Council submitted a rebuttal of the claim based upon the following information.

Committee and site visit

5. Given the nature of the application and the particular planning issues/considerations raised, Members of the Planning and Development Committee fully considered and assessed the proposal.
6. It was an essential part of their understanding of the issues and the decision making process that Members of the Planning and Development Committee carried out a site visit on the morning of the Committee meeting (16th January 2009) to enable Members to be fully aware of the physical characteristics of the site, its surroundings and the relationship of the site to the surroundings. A copy of the Committee Officer's minutes is attached as appendix 1.
7. Members looked at layout plans and elevations of the development, as well as being able to witness the development in situ owing to this being a retrospective application.
8. It should also be noted that the Committee mini-bus was driven into the estate so that Members could see other properties built with standard wall types.
9. At the Committee meeting, the Local Ward Councillor addressed the Committee to explain, expand and draw to Members' attention to the detailed concerns that have been raised in respect of the proposal.
10. When the application was determined, Members of the Planning and Development Committee had the knowledge and full understanding of the appeal site characteristics and surroundings together with the information provided by the Local Ward Councillor.

The decision

11. The Planning and Development Committee's decision to refuse the planning application the subject of appeal was taken after full consideration of the relevant facts and was not entered into in any vexatious, spurious or unreasonable manner. Members did not take the decision lightly. Rather, they went to considerable time and trouble to inspect the appeal site and the

remainder of the Pine Hill development. This enabled members to have the fullest possible understanding of the context of the development. Members' consideration of the application in the Town Hall was therefore not taken on an uninformed basis without viewing the site.

12. The decision was based on:-

- (i) a full understanding of the proposed development and how it would relate to the history of the Pine Hill estate;
- (ii) serious and full consideration of the appeal proposal by virtue of a Committee site visit;
- (iii) the decision was made in accordance with the requirements of Section 54A of the 1990 Act and refusal was in accordance with the approved development plan and justified in terms of Central Government guidance and advice; and
- (iv) the reasons for refusal are wholly justified and substantiated and based upon sound and clear cut planning reasons

13. Having regard to the foregoing the Council would vehemently rebut the applicant's claim for the award of costs

Further Comments by the Applicant

14. The Council's submissions during the Hearing indicate that, rather than being uninformed, Members were fully informed about the weight that should be given to the material planning considerations identified by the officers. It is also evident that the Members chose to ignore them, giving undue weight to matters that were not material planning considerations. Despite the Council's rebuttal submissions, it is still the applicant's opinion that the Planning Committee acted unreasonably. With particular reference to sub-paragraph (iv) of the Council's submission, it is clearly evident that the reasons for refusal have not been justified, have not been substantiated and have not been based upon sound and clear cut planning reasons.

Conclusions

15. I have considered this application for costs in the light of Circular 8/93 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.
16. Paragraph 9 of Annex 3 of the Circular indicates that LPAs are not bound to adopt the professional and technical advice given by their own officers. However, it goes on to record that LPAs will be expected to show that they had reasonable *planning* grounds for taking a decision contrary to that advice and that they were able to produce relevant evidence to support their decision *in all respects* (my emphasis); if they fail to do so, costs may be awarded against the authority.
17. The officers' report to the Planning and Development Committee makes it very clear that the conditions which applied to the original planning permission for the development (of No 25), in relation to front boundary enclosures, were discharged. It goes on to state that these conditions no longer apply to this

development and that the application *must be judged on its merits* (my emphasis). The report also draws the Members' attention to the fact that the site would benefit from permitted development rights to erect a means of enclosure up to 1m in height without planning permission. It also highlights the Middlesbrough Local Development Framework (LDF) as the only relevant policy document. Although there is reference to the 'special planning conditions for Pine Hill' in the summary of consultations, there is no specific mention in the report of the Pine Hill Design Brief (1978) which, I understand was raised during the committee discussion.

18. As Members of the Planning and Development Committee, who regularly make decisions on new development proposals, the Members would have been well aware of the need to confine their deliberations to the merits of the individual application, taking into account the provisions of the development plan and other relevant material planning considerations. I acknowledge that when assessing the impact of a particular development upon the character and appearance of the locality, the decision maker would often rely upon a subjective judgement, depending upon a wide range of considerations. However, the evidence before me suggests that, rather than following on from an analysis of the proper planning considerations, the decision to refuse permission was significantly influenced by the fact that the wall and railings were not consistent with the requirements for front boundary walls set out in the Pine Hill Design Brief. Indeed, the inconsistency with the brief is specifically referred to in the reason for refusal.
19. I understand that this non-statutory document was published, without public consultation, over 30 years ago to guide the initial construction process. It was also confirmed to me that the brief has no current status within the LDF and, as such, little or no weight should have been attached to it in the decision making process, either as a policy document or as a material consideration. At the Hearing, I was provided with a comprehensive history of the original purpose of the brief, and its success in achieving an award winning development in this part of Coulby Newham. Nevertheless, I do not consider that this is sufficient to justify the very significant weight which the Members appear to have attached to the brief in making the decision to refuse permission. I consider, therefore, that it was inappropriate and unreasonable for the Planning and Development Committee to rely so heavily upon it to underpin their decision on the planning application.
20. In the wider analysis, I accept that the Members were entitled to adopt a contrary point of view to their officers on the character and appearance issue. I also acknowledge that such a position would also be consistent with the objectives of national and development plan policy, both of which seek to ensure good design for all development and to protect the character and appearance of the residential environment. As the Members of the committee also undertook a visit to the site and its surroundings, they would have been fully aware of the appearance of the locality and the manner in which other boundaries were defined in both Pine Hill and Gunnergate Lane. Nevertheless, there is little evidence to demonstrate that there was a full and balanced assessment of the actual effect of the development on the present character and appearance of Pine Hill. Moreover, the Council has failed to identify the material harm to the site and its surroundings that would substantiate their

decision to ignore the officer's recommendation and to refuse planning permission.

21. The reason for refusal also refers to the effect of the development on the visual amenities of the adjoining occupiers. I heard evidence that this related to the perceptions of the residents of the original self build homes, still living on Pine Hill, who would feel aggrieved if the development were to be permitted at No 25, as it would be at variance with a very restrictive brief which they had all been compelled to follow. Whilst this may be the case, I do not consider that this would constitute a proper planning consideration. Moreover, the fact that this line of reasoning forms part of the Council's decision notice merely adds to my concern/disquiet/fear that the Members' determination of the application was significantly and unreasonably influenced by the brief.
22. I conclude, therefore, that the Council acted unreasonably in refusing planning permission for the development at appeal and that the applicant has incurred expense unnecessarily in having to lodge the appeal and be represented at the Hearing.

Formal Decision and Costs Order

23. 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 Middlesbrough Borough Council shall pay to Mr E J Brady, the costs of the appeal proceedings, 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 the erection of a 1.8m boundary enclosure, comprising a brick wall with wrought iron railings above on land at 25 Pine Hill, Coulby Newham, Middlesbrough.
24. The applicant is now invited to submit to Middlesbrough 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.

Anthony J Wilson

INSPECTOR