



Costs Decision

Hearing held on 7 July 2009
Site visit made on 7 July 2009

by **Richard J Maile BSc FRICS**

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

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Decision date:
24 July 2009

Costs application in relation to Appeal ref: APP/D1780/A/08/2081638 Land to the rear of 88 Shirley Avenue, Southampton, Hampshire, SO15 5NJ

- 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 DASD Property Services Ltd for a full award of costs against Southampton City Council.
- The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for erection of new four bedroom house with integral garage.

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

The Submissions for DASD Property Services Ltd

1. The application for costs is contained in a written submission (Document 5) prepared by Mr G Beck of Luken Beck Ltd. This outlines the sequence of events following submission of the application, including the appointment of highway engineers and the lack of any objections in terms of the design of the dwelling.
 2. I was referred to paragraph 7 of Annex 3 to Circular 8/93, which states that: "*A Planning Authority should not prevent, inhibit or delay development which could reasonably be permitted in the light of the Development Plan so far as this is material to the application and of any other material considerations.*"
 3. The proposed development of the site has been frustrated and delayed unnecessarily by the Local Planning Authority, as evidenced by the way in which the planning history has unfolded. Details of the negotiations with the Local Authority and the various applications are set out on Pages 2 and 3 of the costs application. The earlier appeal decision is referred to, together with the comments of the previous Inspector and the support for the scheme from officers, who recommended that permission be granted subject to conditions.
 4. Reference is made to paragraph 9 of Annex 3 to the circular, which states that Authorities are not bound to adopt the professional or technical advice of their own officers or others. However, the wording of the circular continues that Local Planning Authorities "*will be expected to show that they had reasonable planning grounds for taking a decision in all respects.*"
 5. I was also asked to take account of paragraph 16 of the annex to the circular, which states that "*a Planning Authority is likely to be regarded as having acted unreasonably in the event of a successful appeal against a refusal of planning permission, if it is clear from a relevant earlier appeal decision that the*
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Secretary of State or a Planning Inspector would have no objection to a revised application in the form which was ultimately allowed and circumstances have not changed materially meantime."

6. It is suggested that the Planning Committee did not take account of the previous Inspector's decision and introduced an additional reason for refusal – that of unacceptable height.
7. Pages 6 and 7 of the costs application detail the sequence of events following the submission of an identical application to that the subject of this appeal. At Committee on 23 December 2008 the Planning Officer submitted a report for consideration with a recommendation for approval. The Council Minute states clearly that a resolution was agreed to delegate authority to the Development Control Manager to grant conditional planning permission.
8. On 9 February 2009 the Head of Development Control sent an email to the appellants' architect informing him that a letter had been received by the Council regarding a question of protocol at Committee in December 2008 for which a legal opinion would be obtained. As a result the application was reconsidered on 2 April 2009 and, despite the fact that yet another set of independent professionals from outside the Council prepared the planning report and advised the newly formed Planning Committee to approve, the application was again refused.
9. As to the suggestion that the decision to appeal was taken too early, it is necessary to consider the lengthy delays and requests for further information over a long period of time. The appellants have been patient and worked well with the Council officers.
10. For all of these reasons I am requested to make a full award of costs against Southampton City Council.

The Response by Southampton City Council

11. A written rebuttal statement (Document 6) was submitted, which suggests that the appellants' decision to appeal the application after only 10 weeks when there was no indication that planning permission would not be forthcoming is considered precipitate. Whilst the appellants have worked diligently to overcome previous objections, they have failed to engage with adjoining owners. Committee members have a duty to respond to the views and objections of their constituents.
12. It is considered that the members' decision was well informed and balanced. The detailed letters of objection from residents are material considerations, including judgements on highway safety and the character/amenity impact of the scheme. The appeal submissions do not attempt to address the residents' concerns but merely highlight the fact that the applications were recommended for approval by the officers.
13. It is considered that the highway evidence is inconsistent and ambiguous and there is little or no reference to the findings of the previous Inspector. Detailed criticisms of the highway evidence are set out in the Council's

rebuttal statement (Document 6) with further detailed criticisms of evidence on matters of character/amenity and design.

14. In conclusion, it is suggested that the appellants are architects of their own downfall through the submission of a premature appeal in the first instance. Since that appeal they have failed to provide logical and compelling arguments to support their own case and are largely relying on the Officers' Reports to Committee and technical commentary which, it is suggested, are neither comprehensive nor compelling.
15. In the light of the above the appellants' costs claim is considered to be without foundation and, as such, it should be refused along with the appeal itself.

Conclusions

16. 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.
17. In arriving at my decision I have taken into account the lengthy planning history of the site. In my judgement the appellants were entitled to submit an appeal against non-determination given the length of time that had elapsed since the original application had been submitted and the fact that any decision on the application was delayed by the decision to obtain an independent highway report. It would be wrong to speculate as to the outcome of the Committee's decision on the application the subject of this appeal.
18. My decision to dismiss the appeal is made principally upon the scale of the single dwelling and its appearance in the street scene. Such decisions are necessarily subjective and are at odds with those of the Council's own officers. Nevertheless, I consider that the members were fully justified in their subsequent decision to refuse the application on such grounds. The fact that the previous Inspector had not raised such issues is also irrelevant, given that the scheme before him was for a pair of semi-detached houses and that such issues may not have been canvassed by the parties. For these reasons I do not consider that the Council has acted unreasonably in terms of design issues, which to my mind are of primary importance in the consideration of the appeal proposals, albeit for a single dwelling. My decision is fully supported in policy terms by both the Development Plan and national policy.
19. Conversely, I consider that the Council members had no reasonable grounds for ignoring the considerable level of expert evidence before them on highway issues. There are three independent reports, together with the comments of the Council's own highway engineer that there is no highway evidence to support a refusal of permission. For the detailed reasons set out in my decision letter I agree with the professional evidence on this topic. I therefore consider that the Council's actions have been unreasonable and that an award

of costs relating solely to the highway evidence adduced by the appellants in the appeal process is justified.

20. I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has been demonstrated. I therefore conclude that a partial award of costs is justified.

Formal Decision and Costs Order

21. 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, and all other powers enabling me in that behalf, I HEREBY ORDER that Southampton City Council shall pay to DASD Property Services Ltd the costs of the appeal proceedings, limited to those costs incurred in relation to evidence on highway issues, 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 against the failure to determine an application for planning permission for erection of new four bedroom house with integral garage on land to the rear of 88 Shirley Avenue, Southampton, Hampshire, SO15 5NJ.
22. The applicant is now invited to submit to Southampton 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 Supreme Court Costs Office is enclosed.

R. J. Maile

INSPECTOR