



Costs Decision

Site visit made on 8 August 2016

by Helen Heward BSc (Hons) MRTPI

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

Decision date: 26 August 2016

Costs application in relation to Appeal Ref: APP/J3015/W/16/3149405 123 Brookhill Street, Stapleford, Nottinghamshire NG9 7GU

- 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 Mrs Mary Cox for a full award of costs against Broxtowe Borough Council.
 - The appeal was against the grant of outline planning permission subject to conditions for development described as "*to construct one dwelling with some reserved matters reserved (revised scheme)*".
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Decision

1. The application for costs is refused.

Reasons

2. The costs application and rebuttal to the Council's response are all made in writing and are not repeated in detail here.
 3. The Planning Practice Guidance (PPG) advises that irrespective of the outcome of an appeal, an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
 4. The first part of Condition 6 provides a clear restriction upon development to a single storey dwelling only. The reason is quite brief and refers to a suitable scale for the locality.
 5. I found the Council's concerns regarding the potential impacts of scale to be clearly and reasonably made. The appellant's ground of appeal addressed the effects of the scale, referring to the scale of existing development in the locality and the possible effects of scale upon living conditions, including by reference to another appeal where similar issues had been considered. This indicates that the appellant understood the first part of Condition 6 and its reason.
 6. I found that limiting the dwelling to single storey helped to deliver requirements of development plan policy and development in compliance with advice in the National Planning Policy Framework (Framework), but there are no requirements to refer to the development plan or Framework in the reason. I also found that this part of Condition 6 enabled the Council to allow development to go ahead which would otherwise have had to be refused.
 7. I find nothing unreasonable in seeking to impose a condition restricting development to single storey at the outline stage.
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8. However I found the second part of Condition 6, which related to windows and habitable accommodation above ground floor level, to be somewhat confusing. Restricting windows to first floor habitable rooms was unnecessary for a single storey dwelling and other windows could only be properly considered with all of the information for the dwelling at reserved matters stage.
9. I also found that exceptional circumstances had not been demonstrated for the removal of permitted development rights in Condition 7 and that this Condition was not precisely defined by reference to the relevant provisions in the GPDO 2015. Therefore I deleted Condition 7 and the second part of Condition 6.
10. In these ways the Council failed to have full and proper regard to advice at paragraph 206 of the Framework and in the PPG regarding the 6 tests for conditions that always all be met, and that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. Aspects of the Council's behavior were unreasonable.
11. Nonetheless, I found that to protect the character and appearance of the locality and the living conditions of the occupiers of nearby dwellings justified the limitation of the development to single storey only is reasonable. I therefore find that the Council's behavior did not cause the appellant to incur the unnecessary or wasted expense of an appeal in respect of Condition 6.
12. Moreover whilst I deleted Condition 7 the arguments in respect of Condition 7 were similar to some of those made in respect of Condition 6 and I do not consider that they resulted in the appellant incurring any significant additional or unnecessary or wasted expense at the appeal. Therefore I do not consider that an award of costs in full or part is justified.
13. Accordingly the application is refused.

Helen Heward

INSPECTOR