
Costs Decision

Site visit made on 19 July 2016

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

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

Decision date: 21 October 2016

**Costs application in relation to Appeal Ref: APP/J1860/W/16/3149406
Mortimer Lodge, Roberts End to B4209 Hanley Castle, Hanley Swan,
Worcestershire WR8 0DN**

- 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 J Forbes for a full award of costs against Malvern Hills District Council.
 - The appeal was against the refusal of planning permission for Amendments to Extant Planning Permission 09/00319/FUL – Insertion of Ground Floor Window, Insertion of 2no. Roof Lights, Realignment of Site Boundary and Boundary Wall.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may 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. The applicant cites the following examples from the PPG of unreasonable behaviour by local planning authorities:
 - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; and,
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The application states that the reasons given for refusal were unjustified and unsubstantiated and that the proposal was clearly in accord with the Development Plan, national policy and other material considerations.
5. The reason for refusal set out in the decision notice centres on insufficient information being submitted by the applicant to enable the Council to fully consider the potential effects of the proposal on protected species and protected trees. The reasons are expanded upon in some detail within the officer's report and statement of case.
6. It is noted that there is a detailed and involved planning history dating back to 2009 relating to the conversion of the coach house and associated matters. Whilst the applicant suggests that the extent of the conversion works carried

out should have made it clear to the Council that it was no longer likely to be a suitable habitat for bats, I note that a Daytime Bat Survey was commissioned after planning permission was refused and submitted as part of the appeal. The stringent legislative and policy framework relating to protected species is referred to by the Council in the original officer's report and in their subsequent statement of case.

7. The Council state that updated information was requested but not provided, though I note that this is disputed by the applicant. The Council argues that it was taking a precautionary approach in line with guidance. They point out that this was in the context of an extant planning permission which had indicated that bats were using the coach house at that time which led to the associated condition to mitigate the impact. I note that the Daytime Bat Survey also refers to a precautionary approach in its recommendations.
8. The Council's view is that they are only able to determine matters on the basis of clear evidence presented to them. They also comment in their statement of case that if such a survey had been provided prior to determination of the application it may have resolved the matter. It seems to me that it is appropriate to request expert evidence in a specialist area. Therefore, whilst I appreciate the applicant's perspective, I consider that there was an arguable case that, given the passage of time, further information was required and that the Council did not act unreasonably on that issue.
9. The applicant suggests that the Council were primarily concerned with regularising the position with regard to the separate bat loft constructed to discharge a condition in connection with the 2009 planning permission. However, I am persuaded by the Council's explanation that they were making a pragmatic proposal to attempt to address a number of related issues, taking into account the complex history.
10. With regard to the effect on the boundary wall re-alignment on nearby trees, the Council have since clarified that the term 'protected tree' was incorrectly used in the decision notice. The related Officer's report also refers to the impact on nearby trees, which are a legitimate consideration in relation to development that may affect them if, for example, they make a contribution to the character and appearance of an area. This aspect and whether the matter could have been satisfactorily dealt with by condition is a matter of judgment. Again, therefore, whilst the error in the wording of the decision notice is regrettable, I do not consider that the Council have acted unreasonably.
11. Notwithstanding that I came to a different conclusion to the Council in allowing the appeal, the reason given by the Council indicating why they refused permission, was not in itself inherently invalid. The issues referred to were relevant to the application and explained in the Council's statement of case. The decision was ultimately a matter of planning judgement.
12. Whilst I have fully considered the points made by the applicant, I am not persuaded on the basis of the evidence before me that the Council has acted unreasonably. As such, I do not agree that the applicant was put to unnecessary or wasted expense.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Jonathan Tudor

INSPECTOR