
Costs Decision

Site visit made on 13 December 2016

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 6 January 2017

Costs application in relation to Appeal Ref: APP/J3720/W/16/3157804 9 Kineton Road, Wellesbourne, Warwickshire CV35 9NE

- 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 Michael Page for a full award of costs against Stratford on Avon District Council.
 - The appeal was against the refusal of planning permission for the erection of one, two storey four bedroom house and erection of one, three storey four bed house.
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Decision

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

Reasons

2. Planning Practice Guidance¹ (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. It states² that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal.
3. I have noted the recommendation of the Council's Officers. However, Council Members are entitled not to accept the professional advice of Officers, provided that evidence is produced to substantiate its position. In this regard, it will be seen from my decision that I agree with Council Members that the harm to the living conditions of the occupiers of No 7D Kineton Road is sufficient to justify withholding planning permission. It follows therefore that I am satisfied that the Council has shown that it was able to substantiate its second reason for refusal and that it has not prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations. It also follows that I have not found the Council's second reason for refusal to present vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis.
4. Whilst I have not found that the appeal proposal would result in a cramped and overdeveloped site, as set out in the Council's first reason for refusal, this is a matter of planning judgement and the Council was not unreasonable in coming to its decision on this matter insofar as it relates to the proposed dwelling on the north western side of No 9 Kineton Road, which achieves materially less

¹ Paragraph: 030 Reference ID: 16-030-20140306

² Paragraph: 049 Reference ID: 16-049-20140306

separation than the approved dwelling to the south east of No 9. However, the Council's reason for refusal does not solely relate to this dwelling but refers to the proposed dwellings, even though it subsequently granted planning permission³ for the erection of one dwelling to the south east of No 9. Although the Council argue that the harm arises from a cumulative amount of development on the site, this is not clear from the reason for refusal.

5. Nevertheless, the appeal was lodged following the granting of the second application and therefore in the knowledge that the dwelling to the south east of No 9 is acceptable. Accordingly, any unreasonable behaviour arising from the imprecise nature of the Council's first reason for refusal has not caused the appellant to incur unnecessary or wasted expense in the appeal process.
6. Whilst the appellant contends that the Council should have at least considered issuing a split decision by granting planning permission for the south eastern dwelling, PPG⁴ explains that express powers to issue split decisions are given to the Secretary of State and Inspectors under Section 79 of the Town and Country Planning Act 1990. The same paragraph of the PPG explains that in exceptional circumstances it may be appropriate for a local planning authority to use a condition to grant permission for only part of the development. Therefore, the failure to pursue this option would not amount to unreasonable behaviour causing the appellant to incur unnecessary or wasted expense in the appeal process, particularly as the part of the development which is the focus for the appeal, would have remained.

Conclusion

7. Therefore, for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award of costs is not justified.

Richard S Jones

INSPECTOR

³ Planning Application Ref: 16/02241/FUL

⁴ Paragraph: 013 Reference ID: 21a-013-20140306