
Costs Decision

Site visit made on 10 January 2017

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 13 January 2017

Costs application in relation to Appeal Ref: APP/C3105/W/16/3157531 Airlie Hill, Banbury Hill, Shutford, Oxfordshire OX15 6PE

- 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 and Mrs Howard Stubbs for a full award of costs against Cherwell District Council.
 - The appeal was against the grant subject to conditions of planning permission for the partial demolition of existing dwelling and erection of new two storey extension.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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. Examples of such behaviour include not determining similar cases in a consistent manner and imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not complying with the guidance in the National Planning Policy Framework (the Framework) on planning conditions.
3. The appeal relates to Condition 4 which requires that prior to the first occupation of the development, the external walls of the planning unit shall be rendered in all respects in lime mortar only. The Council state that the objective of the condition is both necessary and reasonable but accepts that as worded it is not reasonable or sufficiently precise.
4. It will be seen from my Decision that I agree that the present wording of the condition is unreasonable and imprecise. I have also found the condition to be unnecessary and that it fails the tests for conditions set out in paragraph 206 of the Framework. Moreover, I am not convinced that in the circumstances I have described that the Council's stated objective of the condition is necessary or reasonable.

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

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

5. I am also unconvinced that there is any significant difference between the appeal proposal and that previously approved on 13 April 2012 under reference 12/00191/F. Whilst there may be some ambiguity in the annotations of the approved plan for the previous planning permission, it is clear that both schemes proposed a combination of new natural stone and render finishes to the enlarged dwelling. The previous decision however, did not include a requirement for the walls to be rendered in lime mortar only, or for the mortar mix to include lime. The applications have not therefore been determined in a consistent manner.
6. I appreciate that the Council in its email of 8 July 2016 acknowledged that the condition is unreasonable and offered two options, namely re-issuing the decision notice with the correct wording (following return of the same) or for the wording to be amended via an application for a Non-Material Amendment. In respect of the first option it subsequently transpired that the Council had not formally issued a decision notice and on this basis confirmed that it was unable to reissue an amended decision notice. The Council acknowledges that this may have played a part in the appellant's decision to appeal against Condition 4.
7. In any case, the appellant sought confirmation that the reference to lime render would be removed. The Council responded on 11 July 2016 stating that the condition is relevant in principle and that it is important that lime based render is used for the proposed ironstone.
8. It therefore appears to me that the Council has failed to provide sufficient clarity in the condition, as well as the subsequent chain of emails which sought to resolve this matter, as to whether its requirement is to use a lime based render or a mortar mix that includes lime. Whilst the Council state it would have considered favourably an application for a Non-Material Amendment, given the on-going lack of clarity and certainty, I do not agree that the appeal could reasonably be avoided.
9. Furthermore, the Council has confirmed that Condition 3, which requires the external walls of the development to be laid, dressed, coursed and pointed in strict accordance with an approved stone sample panel, has been discharged. For this it is stated that the sample panel would "appear" to have contained an element of lime, thereby implying that the approval has been granted without confirmation of this. This in turn implies that Condition 3 already achieves the purpose intended for Condition 4. Therefore, both aspects question further the necessity of Condition 4 in its present and intended state.
10. Whilst the Council say the matter is now academic because the stone sample panel has been approved, this ignores the fact that Condition 4 remains part of the planning permission and requires the external walls of the planning unit to be rendered in all respects in lime mortar only, prior to the first occupation of the development. It would not be reasonable therefore to expect the appellants to retain such a condition, particularly as the dwelling is already occupied.
11. I therefore conclude that the Council has imposed a condition which does not comply with the guidance in the Framework on planning conditions and has not determined similar cases in a consistent manner. This constitutes unreasonable behaviour contrary to the guidance in the PPG and the appellant

has been faced with the unnecessary expense of the preparation of an appeal statement and lodging the appeal, using the services of a planning agent.

Conclusion

12. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

13. In exercise of the 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 enabling powers in that behalf, IT IS HEREBY ORDERED that Cherwell District Council shall pay to Mr and Mrs Howard Stubbs the costs of the appeal proceedings described in the heading of this decision.
14. The applicant is now invited to submit to Cherwell District 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 Senior Courts Costs Office is enclosed.

Richard S Jones

Inspector