
Costs Decision

Site visit made on 23 November 2016

by John Morrison BA (Hons) MSc MRTPI

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

Decision date: 23 February 2017

Costs application in relation to Appeal Ref: APP/Y2810/W/16/3156594 The Firs, Little Lane, Ravensthorpe, Northamptonshire NN6 8EX

- 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 Neil Mason for a full award of costs against Daventry District Council.
 - The appeal was against the refusal of the Council to grant subject to conditions planning permission for the demolition of existing dwelling and outbuildings. Construction of detached dwelling with integral double garage without complying with conditions attached to planning permission Ref DA/2014/0374.
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Decision

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

Reasons

2. National Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
 3. It also makes it clear that costs cannot be claimed for the period during the determination of the planning application although all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in determining whether or not costs should be awarded.
 4. The crux of the applicant's case in applying for costs stems from an assertion that the Council were unreasonable in imposing a condition on the original planning permission (ref DA/2014/0374) which required the windows on the entirety of the east elevation, including those in the ground floor, to be fitted with obscure glazing. This was in the interests of the privacy of the occupiers of neighbouring dwellings.
 5. The applicant felt further aggrieved that the Council then refused an application to vary the same condition, failing to fully assess the site specific effects of using obscure glazing in the first floor only against the merits of different heights of boundary treatment. Thus ultimately resulting in what the applicant determined to be an unnecessary appeal.
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6. It is not conclusive from the evidence as to whether a condition requiring all of the windows in the east elevation to be obscurely glazed was imposed in error. Nevertheless, the applicant had the opportunity at the time immediately after determination to make an application to vary it. As it has transpired however, the applicant continued to submit details to the Council to discharge other conditions on the same planning permission and commence development on site. A conscious choice was made to insert clear glazing in the ground floor windows as part of that development and then, retrospectively, seek planning permission to vary the relevant condition.
7. In effect, had the applicant wanted to insert clear glass in the ground floor windows and did not do so initially, they would have had to submit a fresh application to vary the relevant condition as it was imposed in any event. That application would be subject to public consultation and the possibility it could be referred to a planning committee for determination.
8. I acknowledge that the applicant explored a number of avenues to negate the need for obscure glazing in the ground floor of the east elevation which included the feasibility of erecting a taller fence on the rear garden boundary. A debate on the merits of such an approach aside, Council officers made a positive recommendation to their planning committee to vary two of the conditions attached to the original planning permission. This recommendation was overturned by the planning committee, citing the effect of the proposed taller fence on the living conditions of neighbours as a reason.
9. Whilst I accept that the overturn of a positive officer recommendation may be frustrating, a recommendation to grant planning permission is purely that. Locally elected ward members who make up planning committees are entitled to come to a contrary view to an officer recommendation. Notwithstanding the applicant's assertion that the committee's assessment of the proposed development occurred without a site visit, the committee provided reasons that the proposed development would cause planning harm and as a result not comply with relevant policy.
10. In this case, and notwithstanding my own findings on the proposed development and the matter of the taller fence which is the subject of separate Decision, the planning committee exercised their own planning judgment and as such I do not find that they have acted unreasonably in refusing planning permission.
11. As far as I can see, the Council's precise identification of the harm that in their view the proposed development would cause has made the appeal process straight forward. It is for these reasons that unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated and as such an award of costs is not justified.

John Morrison

INSPECTOR