

Costs Decision

Site visit made on 31 January 2017

by Jameson Bridgwater PGDipTP MRTPI

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

Decision date: 06 March 2017

Appeal Ref: APP/W1850/W/16/3162316

Land adjacent to Dorefield House, Peterchurch, Hereford HR2 0SF

- 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 Peter Smith for an award of costs against Herefordshire Council.
 - The appeal was against the refusal of planning permission for a proposal described as 'Erection of one dwelling and garage'.
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Decision

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

Reasons

2. National Planning Practice Guidance (the Guidance) advises that, costs may only 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 appeals process.
3. The Guidance further sets out that parties in planning appeals and other planning proceedings normally meet their own expenses. Additionally the Guidance is clear that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
4. The appellant states that the Council acted unreasonably on the basis that after deciding not to defend their single substantive reason for refusal relating to the effect of the proposal on the setting of the grade II listed Crossway House, they introduced 4 new reasons for refusal¹. The appellant has stated that this amounts to the introduction of fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen.
5. Whilst I accept that the issues identified within the 4 new reasons for refusal were broadly identified in the Council's report, these were not set out in accordance with the Guidance² and article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO). This includes the requirement, where planning permission is refused, to state clearly and precisely the full reasons for the refusal. I have carefully considered the Council's reasoning to why they did not include all of their reasons for refusal

¹ Herefordshire Council – Statement of Case 16 December 2016 (sections 5 to 10)

² Paragraph: 020 Reference ID: 21b-020-20140306 - Revision date: 06 03 2014

within their decision notice. However, the Council have not adequately demonstrated that their application of paragraph 14 of the Framework and the requirements of a decision taker where a restrictive policy of the Framework is invoked is applicable in the context of the DMPO³.

6. Therefore, the actions of the Council in failing to state clearly and precisely the full reasons for their refusal has resulted in the appellant having to seek legal advice to enable them to prepare and submit an additional statement to address the 4 new reasons for refusal. Moreover, there is no direct conflict with paragraph C.5.1 of the Planning Inspectorate published Procedural Guidance as this relates specifically to householder, advertisement and minor commercial appeals.
7. Having reached the conclusions above the Council has introduced fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.
8. 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 Herefordshire Council shall pay to Mr Peter Smith, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the Council's 4 new reasons for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Herefordshire 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.

Jameson Bridgwater

INSPECTOR

³ Herefordshire Council – Statement of Case 16 December 2016 and Rebuttal to Appellants' costs application