
Costs Decision

Site visit made on 8 May 2017

by H Baugh-Jones BA(Hons) DipLA MA CMLI

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

Decision date: 17th May 2017

Costs application in relation to Appeal Ref: APP/P1805/W/17/3167126 2 Thicknall Rise, Hagley DY9 0LQ

- 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 L Sullivan and Mr M Hyland for a full award of costs against Mr Dabinder Sikham.
 - The appeal was against the refusal of planning permission for proposed 3 bedroom dwelling.
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Decision

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

Reasons

2. Planning Guidance (PPG) advises that 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. PPG is clear that the type of behaviour that may give rise to a substantive award against an appellant includes where an appeal follows a recent appeal decision in respect of the same, or a very similar development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period¹.
4. The claimants argue that the appellant should have taken account of the previous applications and appeal decisions relating to side/rear extensions at the appeal property as they indicated that a large volume of built form at the side of the dwelling was unacceptable. I do not have full details of either the Council's considerations or the Inspector's decisions before me in relation to those other schemes. However, I accept that on the basis available evidence, the volume of development projecting from the side of the dwelling was considered unacceptable in relation to them.
5. Having said that, given that the application is for a stand-alone dwelling I am not convinced that its merits are easily reconcilable with those relating to the extension of an existing dwelling. Therefore, in my view the proposal does not fall within the realm of being the 'same or very similar' to that considered in a recent appeal decision.

¹ Paragraph: 053 Reference ID: 16-053-20140306

6. The claimants also argue that the appellant should have had greater regard to Policies BDP7 and BDP19 of the Bromsgrove District Plan which were emerging at the time of the Council's decision. It is also suggested that the Council's Supplementary Planning Guidance No1 Residential Design Guide was not taken into account.
7. However, when submitting the appeal, the appellant sought to justify the proposal against the now superseded development plan policies that were in force at the time the application and appeal were made and the presumption in favour of sustainable development set out in paragraph 14 of the National Planning Policy Framework (the Framework). He also addressed the relevant recently adopted BDP policies in his final comments.
8. That said, in making his reference to Framework paragraph 14, the appellant ignored the requirement of section 38(6) of the Planning and Compulsory Purchase Act (2004) that applications and appeals should be made in accordance with the development plan unless material considerations indicate otherwise. The appellant therefore began from the wrong starting point in putting the Framework presumption in favour of sustainable development (set out in paragraph 14) ahead of the adopted development plan.
9. Nevertheless, although I did not allow the appeal, I am therefore satisfied that the appellant, although mistaken, has clearly attempted to support his case during the appeal process.
10. I note the claimants' arguments that the appellant has been allowed to submit fresh evidence such that there is an alleged breach of natural justice. However, the appellant was invited to give a view on the relevance of the recently adopted BDP policies and address the statements of interested parties at final comments stage. This is in line with convention that the appellant is given the final say in the appeal process and I am satisfied that the case of interested parties has not been prejudiced.
11. In conclusion, I do not think that the appellant has behaved unreasonably and the application for an award of costs should not succeed.

Hayden Baugh-Jones

Inspector