

Costs Decision

Hearing held on 1 August 2017

Site visit made on 1 August 2017

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

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

Decision date: 25 August 2017

Costs application in relation to Appeal Ref: APP/X0360/W/17/3170553 134-146 London Road, Ruscombe, RG10 9HJ

- 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 McCarthy and Stone Retirement Lifestyles Ltd for a full award of costs against Wokingham Borough Council.
 - The appeal was made against the refusal of planning permission for the erection of 31 retirement two bedroom apartments with associated communal areas, landscaping and parking (C3 use).
-

Decision

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

Reasons

2. The Planning Practice 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. The application for costs and the Council's response were made in writing. The applicant's final comments were made orally at the hearing.
 3. The applicant has applied for an award of costs on the basis that the Council has behaved unreasonably in refusing the application without sufficient grounds. Further that it failed to substantiate the reasons for refusal and has not undertaken the balancing exercise required by Section 38(6) of the 1990 Act. The applicant has, therefore, incurred unnecessary expense in pursuing an appeal which should not have been necessary.
 4. The Council considers that the applicant's cost claim confuses the roles of the planning officer and the members of the planning committee. Whilst the planning officer recommended that the application should be approved, the committee reached a different judgement regarding whether the proposal was similar to the surrounding area. Nor was it unreasonable of the committee to reach a different conclusion in undertaking the balancing exercise.
 5. The planning committee is not bound to follow the planning officer's recommendation provided that it has reasonable grounds for doing so. Nevertheless, it is also relevant that the planning officer's conclusion was supported by the findings of the South East Design Review Panel which did not object to the proposal. Given the weight of advice leaning towards approval of the application, it would be reasonable to expect the committee to identify clear
-

and substantive reasons for taking a different view.

6. In considering the character of the area the Council has referred to particular considerations such as the linear form of nearby dwellings and the regular and spacious plots. However, its assessment of the effect of the proposal on that character is largely based on the difference in size and plan form of the proposed building compared with the surrounding pattern of development. The Council's case refers briefly to disruption as a result of the building's footprint, but does not adequately take into account the massing and articulation of the elevations. It refers to the visibility of the building in the street scene and its the depth and height. However any new development on the appeal site would be visible and increase in height with the rising ground levels. The Council has also previously approved residential development which would extend to the full depth of the site. These matters were not expanded upon significantly at the hearing.
7. Consequently, I consider that the Council's assessment does not sufficiently distinguish between difference and harm to properly substantiate the reason for refusal. Paragraph reference ID 16-49-20140306 of the PPG advises that Councils are at risk of an award of costs if they fail to substantiate each reason for refusal on appeal.
8. Whilst the Council acknowledges the need for housing for older persons, there is nothing in the written or oral evidence to indicate that it has properly balanced all of the potential economic, social and environmental benefits (as set out in National Planning Policy Framework paragraphs 7 and 8) of the proposal against its finding of harm as required by Section 38(6) of the 1990 Act. Paragraph reference ID 16-49-20140306 of the PPG advises that Councils are at risk of an award of costs if they prevent development having regard to its accordance with the development plan, national policy and other material considerations.
9. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the Planning Practice Guidance has been demonstrated and that a full award of costs is justified.

Costs Order

10. 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 Wokingham Borough Council shall pay to McCarthy and Stone Retirement Lifestyles Ltd the costs of the appeal proceedings; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
11. The applicant is now invited to submit to Wokingham Borough 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.

Simon Warder

INSPECTOR