

Appeal Decision

Site visit made on 31 October 2017

by D Cramond BSc MRTPI

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

Decision date: 16 November 2017

Costs application in relation to Appeal Ref: APP/N1160/D/17/3180610 79 Hemerdon Heights, Plymouth, LP7 2EZ

- 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 Mark Goodwin for an award of costs against Plymouth City Council.
 - The appeal was made against the refusal of an application, Ref 17/00598/FUL, which sought planning permission for a two storey side extension.
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Decision

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

Reasons

2. Planning Practice Guidance (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 or wasted expense in the appeal process.
 3. The Appellant argues that there has been unreasonable behaviour by the Council in determination of the proposal and points to what is seen as both procedural and substantive flaws.
 4. It is stated that the Council made a procedural error in referring to a property which is not the neighbouring one and this was factually incorrect and had to be addressed through the appeal papers. Compounding this, the Appellant suggests that there was prevention of development which should clearly have been permitted, given its accordance with the development plan, national policy and any other material considerations. Furthermore it is considered that vague, generalised or inaccurate assertions about the proposal's impact were made and these were unsupported by any objective analysis. Finally it is asserted that it was unreasonable to refuse planning permission on a planning ground which was capable of being dealt with by conditions; the Appellant making the case that suitable conditions would have enabled the proposed development to go ahead.
 5. The Council has responded to the Appellant's claims. The reference to the neighbouring property as No 81 when it is No 80 was a mistake and was based on the assumption of the usual 'odd numbers one side, even numbers the other' pattern found in most streets. In the Council's opinion it was obvious which house was the subject of concern. The Council indicates it believes sufficient reasoning was given for the concerns over neighbouring amenity and
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in any event these were relayed to the Appellant's agent. The Council agrees that had the issue been only about external materials a planning condition could have resolved the matter but it states that this was not the case in this instance.

6. The general principle embodied within the guidance is that the parties involved should normally meet their own expenses. I have carefully considered the matter of a full or, indeed, partial, award of costs.
7. Unfortunate as the house numbering mix-up was, I do not see any evidence of any doubt by the Council, the Appellant, or third parties, as to what property was intended in terms of the Decision Notice or consequently needed to be considered in the Appellant's statement or by a subsequent decision maker. The time taken to highlight and address this error within the Appellant's statement would have been almost negligible and to my mind the mis-numbering was not a regulatory breach or a weighty procedural matter.
8. I am conscious that determinations of many planning applications are, of necessity, matters of judgement rather than empirical evidence or science. I appreciate an appeal process can be time and fee consuming. However the Council has given reasons for the judgement it reached and the decision notice is sufficiently lucid, and stemming from the report which leads up to it, enabling me to determine that development plan matters had been sufficiently considered and impacts had been analysed. The Council position shows wider justification for it not merely dealing with the case via a planning condition; the decision notice is clear that there were other concerns relating to residential amenity as well as scale and position of development impacting on the streetscene. I would class the Council's wording and assertions as not overly vague and its actions were not irrational.
9. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the planning guidance, has not been demonstrated.

D Cramond

INSPECTOR