
Costs Decision

Site visit made on 17 December 2018

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

an Inspector appointed by the Secretary of State

Decision date: 15 February 2019

Costs application in relation to Appeal Ref: APP/J1860/W/18/3200757 Bluebell Farm, Pershore Road, Earls Croome, Worcestershire WR8 9DJ

- 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 Ball for a full award of costs against Malvern Hills District Council.
 - The appeal was against the refusal of planning permission for a live/work unit.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) sets out that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. It goes on to explain that local planning authorities are at risk of an award of costs if they behave unreasonably with regard to the substance of the matter under appeal; for example by unreasonably refusing planning permission or defending appeals. Examples include a failure to produce evidence to substantiate each reason for refusal and making vague, generalised or inaccurate assertions about a proposal's impact, unsupported by any objective analysis and refusing permission on planning grounds capable of being dealt with by conditions.

Ground 1

3. In my determination of the appeal, I found there to be no reason that two separate buildings within the same site could not accommodate separate living quarters and work space such that they would fall within any reasonable definition of a live-work unit. The fact that they would be set some 27m apart is irrelevant as there is nothing in local or national policy that refers to specific separation distances in relation to buildings forming live-work units.
4. Nevertheless, the Council has used its judgement and regardless of whether that judgement was flawed in some way or not, there is no clear evidence that the Council has not substantiated its position through a lack of objective analysis. The Council has clearly interpreted its development plan provisions differently to that of the appellant. I do not consider it has gone about this in an illogical or irrational way. Accordingly, I do not find that the Council has acted unreasonably in relation to ground 1.

Ground 2

5. The appellant tabled amended plans before the application was determined by the Council showing the two separate buildings combined into a single one. I have noted the timing of the Council's objections to the original proposal and the submission of the amended scheme.
6. However, whilst PPG¹ sets out that it is possible for an applicant to suggest changes to application prior to its determination, it makes clear that it is at the discretion of the local planning authority whether to accept such changes, to determine if the changes need to be reconsulted upon, or if the proposed changes are so significant as to materially alter the proposal such that a new application should be made. It seems clear to me that the amended scheme falls within the latter category. Accordingly, I do not find that the Council has acted unreasonably in relation to ground 2.

Ground 3

7. The application site is formed by the red-line boundary shown on the application plans. Thus in the event of a grant of permission, this would comprise the 'planning unit'. Therefore, conditions are capable of being imposed to restrict the use of that planning unit. The Council were made aware of conditions used by a neighbouring local planning authority, also covered by the SWDP. The reasoned justification to SWDP policy SWDP8 sets out that conditions can be used to control the use of the development.
8. However, in assessing the application, it is the Council has made a judgement that has led to its assertion that the condition would not be enforceable. The exercise of judgement was an entirely appropriate course of action and it does not indicate that the Council has behaved unreasonably. The Council has applied an adequate level of reasoning to justify its stance and I do not find cause for an award of costs in relation to ground 3.

Ground 4

9. I acknowledge that the enforcement matter may have influenced the Council's approach to determining the application. However, I do not consider the decision to refuse the application would have been different had these references not appeared in the officer's Planning Committee report. I do not find that the Council has not substantiated its reasons for refusal. For these reasons, I do not find any justification for an award of costs in relation to ground 4.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as set out in the PPG, has not been demonstrated. As a result, neither a full or partial award of costs is justified.

Hayden Baugh-Jones

Inspector

¹ Paragraph: 061 Reference ID: 14-061-20140306