



Costs Decision

Site visit made on 22 January 2019

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2019

Costs application in relation to Appeal Ref: APP/D1835/W/18/3206683 The Mews, Rose Bank, Worcester, WR5 1EQ

- 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 Philip Deeley, Matthews City and Country Homes for a full award of costs against Worcester City Council.
 - The appeal was against the refusal of planning permission for plot style substitution of The Montgomery and The Mews house types following granting of planning permission P15D0146.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) 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 applicant's application for costs was based on the alleged unreasonable behaviour of the local planning authority (LPA) and wasted expense, on several grounds, some of which are discussed below.
4. In respect of substantive matters examples cited in the PPG where costs may be awarded against a LPA include, not determining similar cases in a consistent manner, failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances and imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the of Framework and PPG on planning conditions and obligations.
5. As set out in the appellant's appeal statement, the LPA previously granted planning permission¹ for the construction of the Mews without any requirement for unobscured fenestration (April 2016). Nonetheless, when the appellant applied to reduce the ridge height of the Mews, the LPA imposed a condition for obscured glazing to protect living conditions of neighbours. However, the size and broad location of the windows was unaltered between the two applications.

¹ P15D0146

Furthermore, in an e-mail² to the applicant's agent the LPA confirmed that no material changes had occurred since April 2016 to necessitate the requirement for obscured glazing. In view of this, I conclude that the LPA did not determine similar cases in a consistent manner.

6. Also, in determining the appeal which is the subject of this costs application, I have found that the disputed condition is not necessary or reasonable. Therefore, it does not comply with the guidance in the Framework and the PPG on planning conditions and obligations. For the foregoing reasons, the applicant has been faced with the unnecessary expense of lodging the appeal.
7. Given the above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.
8. Having found that the award of costs is justified based on the above reasons, I have not given any further consideration to the applicant's other grounds for appeal and any responses to these.

Costs Order

9. 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 Worcester City Council shall pay to Philip Deeley, Matthews City and Country Homes, the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to the Worcester City 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

M Aqbal
INSPECTOR

² E-mail correspondence between main parties -13 June 2018