



Costs Decision

Site visit made on 14 May 2019

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: Tuesday, 09 July 2019

Costs application in relation to Appeal Ref: APP/J3720/W/19/3220347 Land rear of 3 & 4 Red Horse Close, Tysoe, Warwick CV35 0TL

- 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 B & C Hudson and J & D Short for a full award of costs against Stratford on Avon District Council.
 - The appeal was against the refusal of the Council to grant subject to conditions planning permission for change of use of agricultural land to garden at rear of existing gardens to 3 and 4 Red Horse Close and erection of a domestic shed on the existing garden to no.4 Red Horse Close.
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Decision

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

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 expense in the appeal process.
3. The applicant submits that the Council has behaved unreasonably in refusing the application. The applicant contends that the first reason for refusal should not apply as the applicant had not applied to change the use of the 'additional land'. In addition, the Council could have issued a part approval for the elements it found acceptable. Furthermore, the second reason for refusal did not provide examples of what 'significant benefits to the local community' are. The Council has not submitted any separate counter cost claims, relying on its Delegated Report and Statement.
4. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
5. The Council has determined the application on the basis that the 'additional land' requires planning permission as a garden extension and I have determined the appeal on this basis. If the applicant dispute this and wishes to establish the legal status of the 'additional land' he can submit a Certificate of Lawful Development application to the Council, against which there is a right of appeal.

6. The Council could have issued a split decision. However, it didn't and I am not aware that the applicant expressly requested the Council issue a split decision prior to the determination of the application. Therefore, the Council has not acted unreasonably when all elements of the development are taken as a whole. In contrast, I have found it reasonable to issue a split decision under the powers given to me, but this would not have avoided the appeal.
7. I acknowledge that the Council has not specified what would constitute a 'significant' benefit in its Delegated report or in the reason for refusal, and that Policy AS.10 does not suggest examples of such. I would not expect this to be the case. Nor would I expect the reason for refusal to set out a list of what would be 'significant' benefits. Each development proposal is different and brings its own specific issues and context that would need to be weighed in the balance against any other relevant matters pertinent to the case.
8. In its Delegated report, however, the Council clearly explained that it did not find the applicants' suggested benefits to be a 'significant' to comply with the policy. For the reasons set out in the appeal decision I too have concerns regarding the lack of significant benefits for the local area. I came to that decision on the consideration of the details and context of the scheme and made an assessment that the applicants' proffered benefits were not 'significant'.
9. I find that the Council has not acted unreasonably. Therefore, I need not concern myself as to whether wasted expenditure has occurred, as both tests need to be satisfied before an award of costs can be made.

Conclusion

10. I therefore find that unreasonable behaviour, resulting in unnecessary or wasted expense at appeal as described in the PPG, has not been demonstrated. An award for costs is therefore not justified.

K Stephens
INSPECTOR