The Planning Inspectorate

Costs Decision

Site visit made on 20 May 2020

by R Morgan BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2020

Costs application in relation to Appeal Ref: APP/M0655/W/20/3245628
Heathfield House, Delenty Drive, Birchwood, Warrington WA3 6AP

- 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 & Mrs Kirkwood of Heathfield House Nursery for a full award of costs against Warrington Borough Council.
- The appeal was against the refusal of planning permission for a single storey extension to the rear of the building to replace outbuilding and provide additional nursery accommodation, without complying with conditions attached to planning permission Ref: APP/M655/A/13/2209344, dated 15 May 2014.

Decision

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

Reasons

2. The Planning Practice Guidance (the 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 expense in the appeal process.

3. The applicant has expressed concerns about delays in the decision making process. Whilst I understand the frustration this may have caused, I have no information which would lead me to conclude that the Council acted unreasonably during the application process. Furthermore, by appealing against non-determination at an earlier stage, as suggested by the applicant, costs associated with an appeal would still have been incurred.

4. The applicant suggests that the application should not have been taken to planning committee, and that to do so contravened the Council's constitution. However, there could have been a similar outcome whatever the decision making route, as the application could have been refused under delegated powers. Therefore, even if the Council did not follow its own protocols, the determination of the application by planning committee did not inevitably result in unnecessary costs associated with an appeal.

5. The planning committee came to a different view to its professional officers, which it was entitled to do, provided that it could justify its decision. Although the original highways objection had been withdrawn, it is clear from reading the revised comments that the highways officer still had concerns about the scheme, in particular the approach to tandem parking. Whilst a tandem layout had previously been accepted at appeal, the current proposal involved increasing the number of spaces arranged in this way and changing the space

available for manoeuvring. As such, there were differences between what had previously been approved and the appeal proposal. The highways report submitted with the appeal explained in detail how the proposed layout would work, but as far as I am aware this information was not available to the planning committee at the time they made their decision.

6. The decision was a matter of judgement, and although I did not agree with the view of the planning committee, I found that their concerns were not unreasonable. Furthermore, the decision notice and appeal statement were sufficient to explain the reasoning behind the decision.

7. The applicant has suggested that the Council behaved unreasonably by introducing new issues in its appeal statement, such as servicing, which had not been referred to in the decision notice. However, the first reason for refusal, relating to highways issues, was wide ranging in scope, and did not preclude consideration of such matters.

8. There appears to have been uncertainty about what could legitimately be considered as part of the s73 application, such as the suggested retrospective application of parking standards. Whilst I appreciate this may have caused concern, it appears to represent an incorrect interpretation of policy and guidance, rather than unreasonable behaviour on the part of the Council.

9. The Council was not obliged to address the points raised in the noise and highway reports which were submitted as part of the appeal, and their failure to do so does not represent unreasonable behaviour. The reports were necessary to support the appeal, and as such, did not represent wasted expense.

10. I conclude that unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, an award of costs is not justified and the application for costs is refused.

R Morgan

INSPECTOR