
Costs Decision

Site visit made on 22 June 2020

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2020

Costs application in relation to Appeal Ref: APP/L1765/W/19/3242873 Hazelwood, 29 Downside Road, Winchester SO22 5LT

- 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 Richard Wickins of Shorewood Homes for a full award of costs against Winchester City Council.
 - The appeal was against the refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. The Planning Practice Guidance (PPG) advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG explains that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example by 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 National Planning Policy Framework on planning conditions.
4. The Council imposed condition 3 on permission 19/00922/FUL to ensure that the development remained compliant with the local plan as regards its requirements for housing mix. The condition wording did not permit many of the ancillary uses that are commonly found within a modern family home – legitimate uses such as studies and playrooms are prohibited. In seeking to restrict use of the garage to parking and ancillary storage, when there were no highway grounds to do so, the framing of the condition was unnecessarily restrictive.
5. The application to vary the condition was made on the basis that Plot 2 would remain as a 3 bedroom dwelling. The garage would simply be reconfigured as a study. No evidence has been presented to demonstrate that this would give rise to a conflict with development plan policy or any other significant harm. The Council has not imposed any use restrictions over other parts of the dwelling, and it has no objections to the principle of studies having accepted them within other residential developments in the City.

6. Applications should be treated at face value and determined on the basis of the plans presented. Whilst I appreciate the local planning authority's desire to maintain control over housing mix, in pursuance of its own policy objectives, it is unnecessary to guard against every possible eventuality however remote. What is required is an assessment of risk. Although it is conceivable that the study in Plot 2 might be used as a bedroom at some future point, the greater likelihood is that most occupiers will use it as a ground floor reception room such as a study or playroom. The Council's overly cautious approach amounts to unreasonable behaviour.
7. I do not share the concerns regarding the design and siting of the proposed garage. Nevertheless, this is a matter of planning judgement and the Council has produced evidence to substantiate its objections. Although unclear within the text, the reference to limited manoeuvring space was not intended to introduce a new issue. The local planning authority explains earlier in its evidence that it has no highway objection to the scheme.
8. It is not clear whether the Council invited the updated drawing pack for my consideration in the appeal scheme, or whether there was miscommunication between the parties, but in any event I do not consider this approach to be appropriate, for the reasons I set out in my decision. No unreasonable behaviour has been demonstrated on this point.
9. It follows from my reasoning above that the appeal could not have been avoided in its entirety. The parties would still have been required to produce evidence on the second refusal reason. However, I have found unreasonable behaviour in relation to the first refusal reason. This has incurred the appellant in unnecessary or wasted expense in the appeal process. Accordingly, a partial award of costs is justified.

Costs Order

10. 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 Winchester City Council shall pay to Mr Richard Wickins of Shorewood Homes, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the first refusal reason on housing mix; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Winchester 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.

Robert Parker

INSPECTOR