



Costs Decision

Site visit made on 7 October 2020

by C Beeby BA (Hons) MIPROW

an Inspector appointed by the Secretary of State

Decision date: 11th November 2020

Costs application in relation to Appeal Ref: APP/K2420/W/20/3251812 39 Station Road, Desford LE9 9FN

- 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 G & S Warren on behalf of Invicta Universal Ltd for a full award of costs against Hinckley & Bosworth Borough Council.
 - The appeal was against the refusal of planning permission for the conversion, alteration, extension and partial demolition of an existing house to enable conversion to 5 apartments; construction of 4 new dwellinghouses; alteration to the access and associated landscaping and facilities.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that costs may 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 PPG states that examples of unreasonable behaviour by local planning authorities include:
 - Lack of co-operation with the other party or parties;
 - Preventing development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - Making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;
 - 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 and obligations; and
 - Refusing to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed.
4. The applicants consider that the Council failed to positively and proactively engage with them prior to refusing planning permission.

5. Correspondence over the course of the planning application indicates that the Council sought clarification where it was deemed necessary and provided clear comments setting out its concerns, which enabled subsequent amendments to the scheme. Contact details were provided for the tree officer and therefore I do not concur with the submission that they were unavailable for discussion. The Council evidently held discussions regarding how its concerns might be overcome, but did not consider this possible given the issues identified. The applicants had the opportunity to respond to these concerns some weeks prior to the Council's decision, and did so. In light of these factors, I therefore conclude that the Council has shown no unreasonable behaviour by failing to co-operate or refusing to provide reasonably requested information.
6. The Council's decision was based on its judgment of the likely harm which would result from the proposal, according to the available evidence. The Council identified unacceptable conflict with development plan policy and this judgment took into account the guidance of the SPD, which is capable of being a relevant consideration. It also considered the proposal's relationship to surrounding development.
7. The PPG sets out that where a local planning authority has refused an application for a proposal that is not in accordance with development plan policy, and no material considerations indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application. I consider that these circumstances arise in this case and therefore that the Council did not prevent development which should clearly be permitted.
8. The Council's delegated report sets out that part of the rear gardens to the terraced dwellings are considered to be unusable due to the proximity of trees. This judgment takes into account the increased garden area shown in an amended scheme. It does not suggest that the Council has misunderstood the sizes of the gardens concerned; rather, the Council has evidently discounted part of the land for potential garden use, reducing the size which it considers to be useable. Thus, its assertions concerning garden provision are not based on an inaccuracy.
9. The Council's delegated report notes that the existing building and the proposed detached dwelling would have a close physical relationship. Its statement of case submits that the two buildings should not produce a terracing effect. However, neither of these submissions suggests that the Council considers that the proposed detached dwelling would occupy the entirety of the gap next to the existing building. Thus, the Council's assertions in this regard are not based on an inaccuracy.
10. Similarly, the delegated report refers to the proposed planting strips within the parking area. Whilst I have reached a different view on the acceptability of the parking arrangements, there is no indication before me that the Council has reached its decision based on an inaccurate appraisal of the landscaping within and around the proposed parking.
11. Thus, it follows that I do not consider that inaccuracies within the Council's reasoning led to the suggestion of conditions which are unnecessary.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

C Beeby

INSPECTOR