



Costs Decision

Site visit made on 14 October 2020

by D Peppitt BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th November 2020

Costs application in relation to Appeal Ref: APP/Z1510/W/20/3251383 Georgianne House, School Green, Blackmore End, Braintree CM7 4DS

- 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 and Mrs D Robson for a full award of costs against Braintree District Council.
 - The appeal was against the refusal of planning permission for outline application for a replacement dwelling using an existing access.
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Decision

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

Reasons

2. The Planning Practice Guidance 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 applicants' application for costs relates to 3 main reasons, namely whether the impact of the proposal was supported by objective analysis, the matter of whether the pre-planning advice given by the Council was correct and the consistency with other decisions.
4. The applicants state that as the proposal was in outline with no details on the siting, design and layout, that the Council could not reasonably assume any replacement dwelling on the site, even if it was larger, would be harmful and that no evidence was provided to support the Council's claims around the harm that would occur.
5. 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.
6. I note that the Council considers the existing building to be subsidiary in its appearance, and has stated that the replacement dwelling would need to be double the size to meet the required national space standards. However, Saved Policy RLP15 of the Local Plan (2005) allows 70m³ of additional floorspace to be added over and above the size of an existing dwelling.

7. Given that the principle of development is already established on the site and that the proposal did not provide details as to what the final scheme would look like, it is unreasonable to assume that it would be harmful. Furthermore, there is no substantive evidence to suggest that a replacement building could not be compatible with the setting. In any case, the size and shape of the replacement dwelling would be considered and determined at the reserved matters stage.
8. In terms of the preapplication advice received by the appellants, the Council's response was clear in that it did not consider the proposal would meet the criteria of Policy RLP15 of the LP or the draft Policy LPP 39 of the Local Plan Publication Draft (2017). I note the appellants have referred to the subsequent advice received from the Council which differed from that within the formal preapplication process. Whilst I acknowledge that this was unreasonable behaviour, this would have been given without prejudice to the final decision. Therefore, I do not consider that this behaviour led to wasted or unnecessary expense in this respect.
9. My attention has been drawn to an application¹ and an appeal² which the applicants consider to show inconsistency in the Council's approach to replacement dwellings. However, although these decisions were approved, despite not fully complying with all the criteria set out within Saved LP Policy RLP15, the proposals were approved on balance because they would improve the overall appearance of the respective sites.
10. In this case, the full details of the scheme are not yet known, and the existing dwelling on site is in good condition and is compatible with its setting. Therefore, from the evidence before me, it is not possible to determine if the proposal would result in an improved appearance to the site. Accordingly, the Council in coming to a different decision for this proposal, has not acted unreasonably in this regard as I do not consider that they are not directly comparable.
11. Accordingly, in the planning judgement, it appears to me that having regard to the provisions of the development plan, the development proposed should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG and the applicants have been faced with the unnecessary expense of lodging the appeal.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that an award of costs is justified.

Costs Order

13. 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 Braintree District Council shall pay to Mr and Mrs D Robson, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicants are now invited to submit to Braintree District Council to whom a copy of this

¹ 20/00681/FUL

² APP/A1510/W/16/3150292

decision has been sent, details of those costs with a view to reaching agreement as to the amount.

D Peppitt

INSPECTOR