

Costs Decision

Site Visit made on 5 January 2021 by Mr John Gunn DipTP Dip DBE MRTPI

Decision by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2021

Costs application in relation to Appeal Ref: APP/T3725/D/20/3260450 2 Penns Close, Cubbington, CV32 7LX

- 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 Hyam for a full award of costs against Warwick District Council.
 - The appeal was against the refusal of planning permission for 'Landing and steps to facilitate access to the rear garden'
-

Decision

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

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Reasons

3. The Planning Practice Guidance (PPG) advises that irrespective of the outcome of an appeal, costs may only 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.
4. It sets out 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 preventing development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - Failure to produce evidence to substantiate each reason for refusal on appeal and
 - Vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. I have been presented with no written evidence of the pre application advice given by the Council to the applicant. However, it is clear that the Council suggested a number of changes which it considered would make the scheme acceptable.

6. One suggestion was for the provision of steps from the bi-fold doors serving the kitchen/dining room directly into the rear garden, thereby avoiding the provision of a landing. In giving their advice it is unlikely that the Council's Planning Officer would have a detailed knowledge of the Building Regulations. Whilst I note the applicants' frustration in this regard it appears that they did not take on board the advice of the Council and submitted the proposal before me.
7. Whilst I acknowledge that there is no specific reference to the 'analysis of the views from the landing' in the delegated report, I am satisfied that with the benefit of the scaled plans, and having stood on the existing decking, the planning Officer would have been in a position to assess the impact of the proposed development on neighbouring residents. Moreover, having identified a concern about the potential overlooking of No 3 from this area, the Council provided the applicants with an opportunity to amend the scheme. Such an approach was entirely reasonable in my mind.
8. Although I found differently to the Council in terms of the effect of the scheme on the living conditions of the neighbouring occupiers, I am satisfied that it substantiated its reason for refusing the application, providing an objective analysis in its report including making reference to the difference in levels between the host property and No 3, the impact of the proposal on the privacy to neighbouring occupiers and making reference to development plan policy.
9. The Council in responding to the application for costs indicates that a typographical error was included in the final paragraph of its reason for refusal No 1. Whilst the lack of precision and clarity in the drafting the decision notice cannot be condoned, it is clear that the decision related to a refusal of planning permission of the proposed development on the grounds set out in the decision notice. Consequently, I find that the error has not led to any additional expense being incurred by the applicant.
10. Given my findings above I consider that the applicants' time and expense in defending the appeal were a necessary part of the process. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated. I recommend that the cost application should be refused.

J Gunn

APPEAL PLANNING OFFICER

Inspector's Decision

11. I have considered all the submitted evidence and the Appeal Planning Officer's report and concur that the application for an award of costs should be refused.

RC Kirby

INSPECTOR