The Planning Inspectorate

Costs Decision

Site visit made on 26 October 2020 by Andreea Spataru BA (Hons) MA

Decision by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2021

Costs application in relation to Appeal Ref: APP/T3725/D/20/3256345
The Hay Barn, Packwood Lane, Lapworth, Solihull B94 6AU

- 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 Andrew Stone-Fewings for a full award of costs against Warwick District Council.
- The appeal was against the refusal of planning permission for the proposed development described as "demolition of existing timber frame garage and construction of proposed double garage".

Decision

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

Procedure

2. An Appeal Planning Officer has set out the recommendation below, to which the Inspector has had regard before deciding the application.

Reasons

3. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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.

4. The Guidance also makes it clear that costs cannot be claimed for the period during the determination of the planning application although all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in determining whether or not costs should be awarded.

5. The key arguments are that the Council has demonstrated unreasonable behaviour due to its arbitrary adoption of threshold to determine what is 'materially larger' and because the Council refused to allow the appellant reasonable time to advance a full justification.

6. The threshold figure of 5% used by the Council, which is mentioned in the appellant's statements and the Council's response to the appellant's application for an award of costs, is unjustified other than with reference to a previous appeal decision where the Inspector considered that an increase in floorspace of

9% was inappropriate development[1]. However, it is also apparent that the Inspector in that case considered factors other than solely the floor space to reach a conclusion that the development would evidently result in a building of increased scale and massing on the appeal site and that it would be materially larger than the existing dwelling it would replace. Furthermore, notwithstanding the Council's intention of providing a level of consistency, there is no meaningful justification for the use of the figure of 5% rather than 9% in the appeal decision. Therefore, in the absence of it being adopted policy, and instead only informal guidance, while a material consideration, the weight afforded to it is limited.

7. Furthermore, whilst the planning officer report concluded that the proposal would be inappropriate development due to an increase of 26% in floor area, its reliance solely on this one material consideration, without showing consideration to the evidence submitted by the applicant is unreasonable.

8. The Council extended the time for the determination of the planning application. The appellant submitted further information which according to the Council was taken into account in the determination of the application. A further request to extend the time for determination to allow the appellant to submit further information was denied by the Council. This information was that relating to the consideration of the proposal under paragraph 145 (g) of the National Planning Policy Framework regarding previously developed land.

9. Even if that was unreasonable, the associated appeal decision concludes that the development should not be permitted whether considered under paragraph 145 (d) or (f). Whilst reliance solely on the informal guidance was unreasonable, it was not unreasonable, for the reasons set out in the appeal decision for the application to have been refused. Accordingly, there has been no wasted expenditure by the appellant due to the Council's unreasonable behaviour.

Conclusion

10. I therefore find that unreasonably behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Therefore, for the reasons given above, I recommend that the application for an award of costs should be refused.

Andreea Spataru

APPEAL PLANNING OFFICER

Inspector's Decision

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

Zoe Raygen

INSPECTOR

[1] APP/T3725/W/18/3210316