



Costs Decision

Site visit made on 19 January 2021

by Elaine Benson BA (Hons) DipTP MRTPI

An Inspector appointed by the Secretary of State

Decision date: 08 March 2021

Costs application in relation to Appeal Ref: APP/J3720/W/20/3261304 Orchard Nurseries, Duck Lane, Welford on Avon, Stratford upon Avon CV37 8QH

- 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 David Findon for a full award of costs against Stratford-on-Avon District Council.
 - The appeal was against the grant subject to conditions of planning permission for variation of conditions 2 (approved plans), 4 (material samples), 5 (hard and soft landscaping), 6 (boundary treatments), 8 (existing and proposed levels), 9 (foul and surface water), 13 (land contamination), 15 (fire hydrants), 16 (external lighting), 17 (landscape management plan).
-

Decision

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

Reasons

2. 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.
3. The PPG indicates that a local planning authority (LPA) will be at risk of an award being made against it if it fails to produce evidence to substantiate each reason for refusal or if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. The PPG sets out the behaviour which may give rise to a substantive award against an LPA.
4. Based upon the applicants submissions, the behaviours identified in the PPG that are of relevance to this application include i) 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 (the Framework) on planning conditions, and ii) not determining similar cases in a consistent manner.
5. As set out in my appeal decision, the Framework states that planning conditions should not be used to restrict national PD rights unless there is a clear justification to do so. Furthermore, the PPG states that conditions restricting the future use of PD rights may not pass the test of reasonableness or necessity and that the scope of such conditions needs to be precisely defined

so that it is clear exactly which rights have been limited or withdrawn. The PPG further advises that blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.

6. Having regard to the guidance in the PPG, the LPA has to clearly demonstrate on planning grounds why a condition is reasonable and necessary and provide clear evidence to substantiate that reasoning. This also applies when a consultee suggests that such a condition is necessary. I acknowledge that the LPA discussed the need for amendments to the proposal during the determination of the planning application. However, the evidence submitted by the LPA provided an inadequate explanation of why it considered harm would arise to the character and appearance of the area and why the withdrawal of PD rights was necessary. As such there was very limited justification for the imposition of Condition 19 and no indication that the guidance in the Framework or the PPG had been followed. Furthermore, I concluded in the appeal decision that Condition 19 is imprecisely defined.
7. Previous similar applications had been approved at the appeal site without the disputed condition. Moreover, in the earlier appeal decision the Inspector specifically rejected the limitation of 'certain PD rights', having had regard to the space around the dwellings and the variation of their design. The LPA had not therefore determined similar cases in a consistent manner.

Conclusion

8. Condition 19 does not meet the relevant tests for conditions. I conclude that the LPA acted unreasonably in respect of its imposition. This led to the applicant's unnecessary or wasted expense in contesting the appeal. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

9. 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 Stratford-on-Avon District Council shall pay to Mr David Findon, 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.
10. The applicant is now invited to submit to Stratford-on-Avon District 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.

Elaine Benson

INSPECTOR