



Costs Decision

Site visit made on 4 November 2021

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2022

Costs application in relation to Appeal Ref: APP/P1805/W/21/3266954 Westing, Bromsgrove Road, Clent DY9 9RH

- 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 Craddock for a full award of costs against Bromsgrove District Council.
 - The appeal was against the refusal of planning permission for wall and gates to frontage (Re-submission of 20/0130/FUL).
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Decision

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

Reasons

2. Planning Practice Guidance ('PPG') advises that, irrespective of the outcome of the 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.
3. The applicants' application for costs is based on the alleged unreasonable behaviour of the local planning authority ('LPA') and wasted expense, for the reasons considered below.
4. The applicants submitted the proposal as a planning application to the LPA and it was determined on that basis. Whilst the applicants assert that the entire development benefits from being permitted development, the appropriate mechanism for establishing this would have been by making an application for a lawful development certificate for the proposed development. This would have established whether or not the proposal required planning permission. The considerations in determining a lawful development certificate are different to that for a planning application.
5. In determining the planning application, the LPA took the view that the wall could be erected under permitted development but not the pillars and gates, this is a matter of planning judgement. The LPA have not clearly explained why the pillars and gates would not be permitted development. Nevertheless, given that the application was for planning permission and not a lawful development certificate, and because the LPA also found the proposal to be unacceptable with regard to the character and appearance of the area, I do not consider this to be determinative.
6. I acknowledge that a fallback position could represent very special circumstances to justify inappropriate development in the Green Belt. Indeed, I

have found this to be the case in determining the applicants' appeal. However, on the information before me, it is unclear if the fallback was clearly identified during the planning application stage. In any event, it would appear that the LPA did have regard to permitted development rights. The assessment of the proposal in light of these and how much weight is assigned to them is a matter for the decision maker.

7. Similarly, on the information before me it is unclear whether or not the applicants' planning application made specific reference to the proposal constituting suitable infill development and also included the level of information submitted as part of the appeal.
8. Notwithstanding the above, I have considered the planning merits of the proposal as part of determining the applicants' appeal, including the effects of the proposal on openness and the character and appearance of the area and it is not necessary to repeat my findings here. Nevertheless, together, the LPAs officer report and decision notice provide an adequate assessment of the proposal. Furthermore, the reasons for refusal are specific to the proposal and refer to local and national planning policy. Therefore, I am satisfied that the LPAs assessment is supported by sufficient analysis, which would also require a degree of subjective consideration, and whilst the applicants may disagree with this, this is a matter of planning judgement.
9. As such, irrespective of finding the appeal in favour of the applicants, I am satisfied that the LPA considered the planning application correctly and based on their assessment came to a view that the proposal did not accord with the development plan and the Framework.
10. Given all of the foregoing, I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated. Therefore, a full award of costs is not justified.

M Aqbal
INSPECTOR