



Costs Decision

Site visit made on 11 January 2022

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2022

Costs application in relation to Appeal Ref: APP/P1805/W/21/3280028 5 Worcester Road, Hagley, West Midlands, DY9 0LF

- 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 Sarb Bhogal (Sharr Homes Ltd) for a full award of costs against Bromsgrove District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission to demolish existing car showroom and construct 5no dwellings.
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Decision

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

Reasons

2. The 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. It sets out that local planning authorities are at risk of an award of costs if they behave unreasonably, which include the non-compliance with procedural requirements such as failing to meet deadlines or a lack of co-operation with the other party.
4. The applicant alleges that the Council failed to determine the application within the prescribed period whilst not giving the applicant's agent any reasoned response in a timely manner. Whilst the Council did not determine the application, concerns with the scheme were expressed in emails to the applicant's agent dated 13 May 2021 and 25 June 2021.
5. Essentially these concerns related to plot 3 and the impact that the Council considered it would have on the neighbouring property at 7 Worcester Road. On both occasions the Council made it clear that the application would be refused in its current guise and afforded the opportunity to amend the scheme should the applicant choose to do so. There is no evidence before me which indicates any failure to co-operate or respond in a timely manner, with the agents email to the Council on 25 June 2021 being responded to on the very same day.
6. In view of the above it appears clear that even if the application had been determined within the statutory period the applicant will still have had to

pursue an appeal. Whilst I understand the frustration which may have been caused by the failure to determine the application, in my judgement the Council communicated its concerns regarding the development and provided an opportunity for the applicant to amend the scheme should they so wish. The Council also made it clear that if that option was not pursued, then they would be proceeding to refuse the application.

7. The applicant further alleges that the Council was unreasonable in failing to grant planning permission for the proposed scheme, in disregard of the extant planning permission (Ref 19/00833/S73) for the erection of 5no dwellings on the site.
8. It is apparent however from the Council's statement and indeed in the emails referred to above that they have considered the outline planning permission when assessing the appeal scheme.
9. Whilst the extant outline planning permission is a material consideration and does provide an approved layout for the site, the specific details of plot 3 including its type and height have not been approved with such matters being reserved. The Council clearly acknowledge the presence of the outline planning permission, however when assessing the application scheme before them they conclude that it would result in harm being caused. In particular this is with regard to its impact on the living conditions of occupiers of neighbouring properties and on housing mix.
10. As may be seen from the accompanying appeal, I agree with the Council that from the details shown for the proposed dwelling on plot 3 the development would be harmful to the living conditions of occupiers of No 7 and the area's housing mix. An assessment is included within the Council's statement of case which substantiates their position whilst referring to the relevant development plan policies.
11. Given my findings above I consider that the applicant's 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. As a result, I find that the cost application should be refused.

David Jones

INSPECTOR