The Planning Inspectorate

Costs Decision

Site visit made on 5 April 2022

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 May 2022

Costs application in relation to Appeal Ref: APP/J1860/W/21/3287755
Northington Farm, Farm Lane, Holt Heath WR6 6NQ

- 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 G Probert for a full award of costs against Malvern Hills District Council.
- The appeal was against the refusal of planning permission for change of use of ground floor of one unit to B8.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that 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. Paragraph 049 of the PPG sets out the examples of unreasonable behaviour by local planning authorities. The applicants contend that the Council have acted unreasonably by refusing planning permission on a planning ground capable of being dealt with by conditions; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis and preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

4. Whilst Worcestershire Regulatory Services (WRS) did not object to the planning application. They nonetheless requested a number of conditions due to the close proximity of residential dwellings. This demonstrates there are concerns regarding the potential for noise nuisance and disturbance and a need for mitigation in order to safeguard the living conditions of the occupiers of The Old Farmhouse.

5. The Council has exercised their planning judgement by assessing whether the suggested conditions would meet the tests set out in the National Planning Policy Framework. As can be seen from my decision I agree with the Council that the imposition of a condition to control the opening and closing of doors in the building is not reasonable and could not be enforced. In any event it would not mitigate the harm that I have identified in respect of noise and disturbance.

6. With regard to vague, generalised or inaccurate assertions the consideration of the proposed development is a matter of planning judgement for the decision maker to come to a view on based on the individual merits of the case taking account of considerations including, in this case, comments made by WRS.

7. I have found that the Council had reasonable concerns about the impact of the proposed development which justified its decision relating to the impact on the living conditions of nearby residents. I find that the Council has not failed to properly evaluate the existing situation or consider the merits of the scheme. It is apparent to me that the Council had legitimate concerns based on the evidence provided and has provided clear and justified reasons for refusal and substantiated its position on appeal rather than vague, generalised or inaccurate assertions.

8. Turning to preventing or delaying the development, whilst I appreciate the applicant's frustration, enforcement issues and the Council's actions relating to the previous tenants is not relevant to the appeal and the cost application.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, and having had regard to all other matters raised, an award of costs is not justified.

B Thandi

INSPECTOR