



Costs Decision

Site visit made on 17 May 2022

by Helen Smith BSc (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th July 2022

Costs application in relation to Appeal Ref: APP/D1835/W/22/3291431 18 Cavendish Street, Worcester WR5 3DU

- 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 R Peel for a full award of costs against Worcester City Council.
 - The application Ref 21/00215/OUT, dated 11 January 2021, was refused by notice dated 21 January 2022.
 - The appeal was against a refusal to grant outline planning permission for the proposed development described as "outline for a single detached dwelling to rear of 18 Cavendish Street with access from Waverley Street."
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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. Unreasonable behaviour can relate to procedural matters (i.e. the appeal process) or substantive matters (i.e. issues related to the planning merits of the appeal).
4. The applicant alleges that the Council acted unreasonably during the processing of the planning application. The main parties submitted their cases in writing and therefore there is no need to repeat them in full.
5. Essentially the applicant is seeking a full award of costs for his time spent putting together the appeal. In addition, he claims that he lost his right of appeal against non-determination, due to the Council's alleged unreasonable behaviour.
6. I acknowledge that unnecessary delays on the part of the Council can amount to unreasonable behaviour under the costs regime. However, significant efforts have been made by the Council to resolve these issues through the Council's formal complaints process. The outcome of the applicant's formal complaint to the Council was upheld with payments made to reimburse the applicant for the planning application fee for application 21/00215/OUT, along with a payment for delays in determining the applicant's other planning application 21/00784/HP. In addition, the Council made a further payment as a gesture of goodwill in recognition of the inconvenience and frustration experienced by the

applicant during the planning application process. The Council also claim that the delays in determination were due to several staffing and resourcing issues and matters relating to the Covid-19 pandemic. As such, I find that the Council has taken appropriate steps to investigate the issues raised by the applicant regarding the delay in determining the application and has resolved them through its own formal complaints process. Therefore, I find the Council to have acted reasonably in this instance.

7. I also note that the Council did not at any point prevent the applicant from submitting an appeal against non-determination. The Council has confirmed that a letter was sent to the applicant explaining that if a decision was not reached by 27 April 2021, the applicant could appeal to the Planning Inspectorate. Therefore, the Council also acted reasonably in this regard.
8. The applicant refers to a draft decision notice that was sent out by the Case Officer during the application process. However, the Council has advised that this was sent for the purposes of obtaining written agreement from the applicant in terms of the proposed pre-commencement conditions. The letter was sent in accordance with Section 100ZA(5) of the Town and Country Planning Act 1990, whereby if the Case Officer was minded to grant planning permission subject to pre-commencement conditions she/he may only do so with the written agreement of the appellant to the terms of the conditions. Although I do not have a copy of this draft decision letter before me, it would have been sent without prejudice to the Council's consideration of the case, or its final decision.
9. Having considered all the evidence put forward by the parties, I consider that the appeal could not have been avoided as the Council refused the application. Therefore, I conclude that the applicant has not incurred unnecessary expense in lodging the appeal because of the Council's delay in determining the application.
10. In respect of the reason for refusal, the Council gave reasons as to why it was concerned that the proposal, by virtue of a cramped and contrived appearance, harm to living conditions, and flood risk caused by the proposal, would be contrary to development plan policy in regard to adverse impacts on human health and wellbeing, and the character and appearance of the area. The above matters involve a degree of judgement and, as I have set out in my decision letter, I agree that the proposal would result in harm. Although I do not agree with the Council's decision in terms of the proposal's effect on local character and appearance, sufficiently robust evidence was submitted to show that the Council did not apply its judgement in an unreasonable manner, in accordance with the advice in the PPG.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. An award of costs is not therefore justified.

Helen Smith

INSPECTOR