



Costs Decision

Site visit made on 15 July 2022

by Lewis Condé Msc, Bsc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2022

Costs application in relation to Appeal Ref: APP/D1835/W/22/3295352 Rose Villa, Nunnery Lane, Worcester WR5 1RG

- 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 Jabran Khalid for a full award of costs against Worcester City Council.
 - The appeal was against the refusal of planning permission for the 'proposed erection of a new dwelling' without complying with a condition attached to planning permission Ref 20/00088/FUL, dated 29 September 2020.
-

Decision

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

Reasons

2. Planning Policy 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 expense in the appeal process.
3. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes the failure to produce evidence to substantiate reasons for refusal and making vague generalised or inaccurate assertions unsupported by objective analysis. Additionally, persisting in objections to a scheme, or elements of a scheme, which an Inspector has previously indicated to be acceptable is also identified as unreasonable behaviour.
4. The application essentially relies on the fact that the Council went against the advice of its professional officers and failed to provide adequate reasons for refusing planning permission. Furthermore, the Applicant highlights that this appeal follows two previous appeals that were allowed for similar development at the site, whereby the Council's decision did not follow the advice of its planning officers.
5. In this case I have noted the recommendation of the Council's Officers, however, the decision is one which is largely a matter of judgement. The Council Members in this case were entitled not to accept the professional advice of officers so long as a case could be made for the contrary view.
6. Whilst it will be seen from my decision that I do not concur with Council Members, it remains that they have made a judgement based upon design matters that are subjective in nature. The scheme is also of an alternative

design from the previously approved appeal schemes at this site, as such, the Council was not bound by those decisions.

7. The Council supported their assessment of the scheme with reference to accurate observations of the site, its surroundings, and held the proposal up against relevant elements of the development plan. I am satisfied that the Council has suitably substantiated its reason for refusal, with regards to the cumulative impact that several design changes would have on the character and appearance of the area. Consequently, it follows that I cannot agree that the Council has acted unreasonably in refusing the application.
8. The Applicant identifies that Council Members refused the development based on elements that did not form part of the application proposals and therefore made inaccurate assertions about the proposal's impact. It is recognised that the fencing and boundary treatment were not identified within the officer's report as works for which permission was being sought. However, there is some ambiguity given that the drawing for which approval is sought (Drawing No: 1801-P-01 P) is annotated to include close boarded fencing, unlike the previously approved drawing (Drawing No: 1801-P-01 I) that the application seeks to replace.
9. Whilst I appreciate there is little evidence in support of the Council's position on biodiversity, it is nonetheless a relevant consideration in the development plan and the Framework, and the onus rests principally on the appellant to substantiate their case. Moreover, biodiversity matters alone did not force the appellant's hand into appealing and, as a matter of planning judgement, I have reasoned in the associated appeal that this matter could be suitably addressed via planning condition (rather than would be inherently resolved by the nature of the scheme in itself).

Conclusion

10. For the reasons set out above, I consider that unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. Consequently, having regard to all matters raised, an award for costs is not justified.

Lewis Condé

INSPECTOR