



Costs Decision

Site visit made on 31 January 2023

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2023

Costs application in relation to Appeal Ref: APP/R3705/W/22/3309274 Peel House, 79 Witherley Road, Atherstone CV9 1NA

- 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 L King for a full award of costs against North Warwickshire Borough Council.
 - The appeal was against the refusal of planning permission for extension and alterations to existing dwelling and construction of 1 new dwelling with access off Nursery Road.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and so caused the costs applicant to incur unnecessary expense in the appeal process. This application claims unreasonable behaviour by the Council in terms of (i) failing to produce evidence to substantiate the refusal reason, (ii) relying upon vague, inaccurate, and generalised assertions about the proposal's impact which are unsupported by any objective analysis, (iii) refusing planning permission on a ground capable of being dealt with by planning conditions, and (iv) preventing development that clearly should have been permitted having regard to the development plan, national policy and other material factors.
3. The decision to refuse planning permission was made by the Council's planning and development board against the advice of its officers. The Council is not duty bound to follow this advice but it has to clearly demonstrate on planning grounds why a proposal is unacceptable and properly substantiate its reasons.
4. The Council's reason for refusing planning permission firstly sets out a concern over a loss of amenity to the occupiers of neighbouring property due to overlooking and loss of privacy. The refusal reason does not specify which properties the Council considers would be affected. However, the appeal statement of case explains its concerns in more detail. Therefore, the Council has not failed to produce evidence as claimed and there has been no unreasonable behaviour in these regards.
5. The Council's statement of case refers to only 39 and 40 Nursery Road (Nos 39 and 40) as properties that would be affected by the proposed development. The Council makes no claim that occupiers of No 39 would suffer from a loss of privacy due to the development. In respect of overlooking towards No 40, the Council makes brief observations that the southern elevation of the proposed

- dwelling on plot 1 would contain windows with views towards No 40 and its private amenity space. Also, it states that the new windows would be approximately 15.5m from No 40's north-facing side wall.
6. There is no statement that clearly identifies how the proposal would cause a loss of privacy to No 40. The Council's comments fail to recognise that views from the plot 1 dwelling's bedroom windows would be towards No 40's front garden. Also, there is no recognition that views to the private back garden would be at a distance and at a tight angle and would be obscured by the garage roof. Furthermore, the Council's statement fails to firmly identify the windows in the house at No 40 that it considers would be overlooked.
 7. Therefore, the Council's case in respect of overlooking is based on vague and seemingly inaccurate assertions about the effects of the development. Moreover, there is no indication that the Council has considered whether any overlooking concerns could be addressed through the imposition of planning conditions, for example, through the use of obscure glazing or through the replacement of any offending window with another on a different elevation. In these regards, the Council has acted unreasonably.
 8. The Council's refusal reason also refers to additional traffic generation and intensification of development. From the Council's appeal statement it is evident that the concerns lie with the potential disturbance to occupiers of Nos 39 and 40 by reason of vehicular trips to and from the proposed development and associated noise.
 9. The issue as to whether the development would cause unacceptable nuisance is a matter of planning judgement, particularly in the absence of any technical noise assessment. The planning and development management board were advised that the Council's environmental health officer raised no objections to the scheme on the basis of noise. However, there is no dispute between the parties that the proposal would lead to an increase in movement on as well as to and from the site, even when taking into account the fallback position raised by the appellant. Accordingly, it is fair for the board members to consider the development would lead to potential harm by reason of extra traffic activity.
 10. Therefore, I find the Council's case in these regards is not unreasonable, even though I have arrived at a different conclusion on the matter. It follows that the Council has not acted unreasonably by preventing development that clearly should have been permitted having regard to the development plan policies and other considerations.
 11. However, for the reasons given above, I conclude the Council has acted unreasonably in terms of basing its concerns in respect of overlooking and loss of privacy on vague and inaccurate assertions about the impact of the proposed development. Also, it has failed to demonstrate that it has considered the imposition of conditions to overcome its concerns before refusing permission. The appellant has had to respond to the Council's case in respect of overlooking and privacy and so they have incurred unnecessary costs in the appeal process. A partial award of costs is justified to cover the appellant's expense in contesting the Council's case on overlooking and loss of privacy.

Costs Order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that North Warwickshire Borough Council shall pay to Mr L King, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the Council's case that the development would lead to an unacceptable loss of amenity to the occupiers of neighbouring properties due to overlooking and the loss of privacy; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Jonathan Edwards

INSPECTOR