



Costs Decision

Site visit made on 16 February 2023

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 June 2023

Costs application in relation to Appeal Ref: APP/D1835/D/22/3305724 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 to grant approval required under Article 3(1) and Class AA of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the construction of an upward extension to provide one additional storey above existing dwellinghouse.
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Decision

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

Reasons

2. The National 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. The PPG also makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material planning considerations. Other grounds include that the Council fails to produce evidence to substantiate each reason for refusal at appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. In summary, the applicant sets out that the Council has acted unreasonably on the basis that the reason for refusal is not based on the assessment and requirements of the Development Plan policies. Instead, the Council have sought to resist the application, contrary to both their professional planning officer's assessment and the relevant policies in the South Worcestershire Development Plan (2016) (SWDP) and the South Worcestershire Design Guide Supplementary Planning Document (2018) (SWDG).
5. The Council's reason for refusal claims that the proposed development would breach the 25 degree code and harm the amenities of the neighbouring properties. This is contrary to the LPA's own assessment of the proposed first floor extension from the previous application 22/00269/PRA. Furthermore, the proposed extension would clearly not breach the 25 degree code as has been demonstrated.

6. It is submitted that there is no justification or objective analysis given by the Council to make such an unreasonable claim as they have, and are factually incorrect and misleading.
7. In response, the Council set out that they carried out an assessment of the proposal and concluded it would be contrary to Policy SWDP 21 of the SWDP and the SWDG, with the Council's assessment concluding that there is not sufficient separation distance between the appeal proposal and 45 & 47 Spetchley Road to prevent an adverse loss of daylight to these properties.
8. The Council set out that the appellants plan submitted with their appeal statement shows a distance of 14 metres between Rose Villa and 45 Spetchley Road, whereas the scaled measurement of the plans submitted with the application show this distance to be 13.2 metres to the kitchen windows and 9.5 metres to the conservatory of No.45. It is indicated that given the distances involved the proposed upward extension would impact the outlook from No.45 and would have a harmful overbearing impact on No 45, both in terms of the dwelling itself and the rear amenity space.
9. Therefore, the Council consider that it has not prevented or delayed development which should clearly be permitted.
10. From the evidence before me, it was very clear that the proposal would accord with the 25 degree guide from the main dwellings of both Nos 45 and 47. Whilst it was less clear in respect of the conservatory at No. 45, given the hipped roof design of the proposal and the relative positions of the respective properties it was clear that the proposal would not have any real harm to the living conditions of the occupiers of either Nos 45 or 47.
11. Furthermore, it is clear that the Council could not have undertaken a proper 25 degree guide assessment of the proposal, otherwise it would have found that the proposal accorded with its own guidance. It is also significant that the Council in response to the costs application did not tackle this point – despite it being very clearly made by the applicant.
12. In respect of the consideration of the 25 degree guide (and the resultant view that the proposal would lead to a loss of daylight and be overbearing from the rear aspects of Nos 45 and 47 Spetchley Road), I find that the Council has acted unreasonably which has led to unnecessary expense by the applicant.
13. In respect of the relationship between the appeal property and the garden area of No. 47, both in terms of loss of daylight and the perception of overlooking, both of these matters are material planning considerations. Whilst I have found in favour of the applicant in my decision on these matters, these considerations are very much a matter of planning judgement and, in this case, I consider that the Council have provided sufficient evidence to substantiate their view in these aspects.
14. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a partial award of costs is therefore warranted.

Costs Order

15. 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 Worcester City Council shall pay to Mr Jabran Khalid, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the 25 degree guide; such costs to be assessed in the Senior Courts Costs Office if not agreed.

16. The applicant is now invited to submit to Worcester City 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.

Chris Forrett

INSPECTOR