



Costs Decision

Site visit made on 3 October 2023

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 November 2023

Costs application in relation to Appeal Ref: APP/D1835/W/23/3318831 55 Martley Road, Worcester WR2 6HG

- 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 Bidsid Ltd for a full award of costs against Worcester City Council.
 - The appeal was against the refusal of planning permission for Two-storey side extension and change of use from a 5 bedroom House in Multiple Occupation (Use Class C4) to a 7 bedroom House in Multiple Occupation (Use Class Sui Generis).
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Decision

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

The case for the applicant

2. The Council has made its decision on inaccurate information and had not taken previous approvals at the site into consideration. The Council did not respond to suggestions to overcome the Council's concerns. Furthermore, the case officer changed, and the Council did not agree to an extension of time when the application was not determined on the target date. As a result the Council acted unreasonably in dealing with the application and a full award of costs is sought.

The case for the Council.

3. The Council does not fully understand the applicant's claim. The application was assessed and determined in line with practice and procedure and a decision was issued. Together with the officer report this clearly sets out the Council's rationale for recommending refusal. Consequently an award of costs is not justified.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, 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.
5. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis, or not determining cases in a consistent manner.

6. A change of case officer handling a planning application is not uncommon and can happen for a number of reasons, such as out of necessity if a member of staff ceases employment with the Council, the case officer becomes ill, or workloads are reallocated for operational reasons. This does not amount to unreasonable behaviour. In any event, the submitted email exchange shows that the new case officer engaged in meaningful discussion with the applicant before determining the application.
7. The email exchange shows there was discussion of the Council's concerns and the applicant's attempts to overcome them. The case officer responded to say they had looked through the submitted information, studied the other planning application examples referred to and discussed the scheme with their line manager. The case officer concluded they were still of the opinion the application should be refused. As the applicant proceeded with the application knowing it was likely to be refused, an appeal could not have been avoided.
8. The email exchange shows the applicant questions the Council's measurement of the rear amenity area and says they will clarify and confirm. There is no further discussion of this. The applicant's statement of case refers to the measurement being wrong as it did not take account of the removal of the garage. I found the plans to be poor quality and ambiguous about the rear amenity space. Nonetheless, the numerical amount of amenity space was not determinative in the case as the proposed provision also involved consideration of its nature, configuration and quality.
9. The reasons for refusing the application were clearly substantiated in the Council's delegated decision report. The report set out the Council's key concerns and provided sufficient information for me to determine the appeal.
10. The delegated report also shows the Council was fully aware of the previous decisions it had made on the appeal site and taken them into consideration, as well as explaining the differences with the appeal proposal to warrant a making a different decision for the 7-bedroom HMO application. The Council also explained why some of the other examples of HMOs, including an appeal decision, were different and would, in its view, justify a refusal contrary to development plan policy. The Council was entitled to come to this view based on its judgement of the planning merits. It does not mean the Council was inconsistent in its decision-making. I did the same.
11. The reason for refusal in the decision notice is complete, precise, specific and relevant to the application. It also states the policies with which the proposal would conflict. I therefore find the Council properly evaluated the application, the merits of the scheme and took other relevant decisions and applications into account, and in this regard has not acted unreasonably.
12. The applicant comments that the decision was made (on 24 February 2023) after the target date of 17 January 2023. Whilst I accept the Council did not request an extension of time as it should have done, the applicant did not exercise his right to lodge an appeal against non-determination for whatever reason. The aforementioned email exchange extracts show that on the 1 February the applicant asked the new case officer for an update. There was no mention of appealing against non-determination and discussions continued until 15 February.

13. To draw the matters together, I find that the Council has not acted unreasonably. Therefore, I need not concern myself as to whether wasted expenditure has occurred, as both tests need to be satisfied before an award of costs can be made.

Conclusion

14. I find that unreasonable behaviour, resulting in unnecessary or wasted expense at appeal as described in the PPG, has not been demonstrated. An award for costs is therefore not justified.

K Stephens
INSPECTOR