
Costs Decision

Site visit made on 21 September 2016

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 October 2016

Costs application in relation to Appeal Ref: APP/Q3305/W/16/3152626 6 Frome Road, Rode, Frome BA11 6PW

- 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 and Mrs E Boyce for a full award of costs against Mendip District Council.
 - The appeal was against the refusal of planning permission for a redevelopment to replace existing dwelling and garage with 5 No new dwellings and associated garages.
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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 (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. The PPG makes it clear that an aim of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case and not to add to development costs through avoidable delay.
 3. This application relies largely upon the fact that the Council Planning Officer's recommended approval of the planning application but that Members of the Planning Board resolved to refuse it. The planning officer had been informed in making the recommendation by the consultation responses from the Highway Officer. Furthermore, the application refers to the lack of technical expertise regarding highways matters possessed by Members in going against the recommendation.
 4. In rebutting this application, the Council correctly states that Members are entitled to refuse an application contrary to the professional recommendation where they consider that a proposal would be contrary to the development plan. Compliance or otherwise with development plan policies turned on highway safety issues. The PPG provides examples of unreasonable behaviour. It is necessary to produce evidence to substantiate reasons for refusal that stand up to scrutiny on appeal.
 5. The Council did provide an appeal statement. That appeal statement included evidence of accidents along the A361. Reference to vehicle speeds being regularly above 30mph is also made and Councillor Oliver sets out some of that
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detail from surveys in her letter. However no highway expert evidence was produced to interpret the surveys and to explain the cause of those accidents, vehicle speeds or whether the proposal would make that situation any worse or even potentially better. Had further expert views been sought, it may have provided objective evidence to support the Council's case. It may alternatively have reaffirmed the existing professional advice. It could have given an opportunity for the Council to review its decision and open up discussions again with the appellant.

6. It was also suggested within the Council's appeal statement that that the A361 is a "road" rather than "street" as defined within 'The Manual for Streets'. As such it was argued that the 'Design Manual for Roads and Bridges' should have been used with its more stringent requirements. However, it appears to have been an argument put forward only within the appeal statement to justify a decision already made rather than being at the heart of the decision.
7. The submission of data about the existing problems on the A361 was insufficient in itself to demonstrate that this proposal would cause further harm in highway safety terms. I therefore consider that the lack of expert analysis of highway survey data and conditions in support of their case meant that the Council did not adequately substantiate the reason for refusal. Insufficient evidence was provided to explain why the decision should be made in spite of the clear recommendation from Planning and Highway Officers.
8. The appellants instructed professional advisors to lodge the appeal and provide supporting documents as well as in the submission of the costs application. The PPG is clear in stating that costs awards relate to the appeal proceedings. Although the further planning application may not have been necessary had the appeal proposal been approved, that is not a matter that should be taken into account in agreeing the level of the costs award.
9. I therefore consider that unreasonable behaviour resulting in the unnecessary and wasted costs as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

10. 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 Mendip District Council shall pay to Mr and Mrs E Boyce, the costs of the appeal proceedings described in the heading of this decision such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Mendip District 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.

Andy Harwood

INSPECTOR