
Costs Decision

Site visit made on 12 September 2016

by Rachel Walmsley BSc MSc MRTPI

Decision date: 24 November 2016

**Costs application in relation to Appeal Ref: APP/B1605/W/16/3151666
24/26 Horsefair Street, Charlton Kings, Cheltenham, Gloucester GL53 0JE**

- 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 R Martin for an award of costs against Cheltenham Borough Council.
- The appeal was against the refusal of the Council to grant planning permission for the demolition of existing dwelling and erection of three detached dwellings with garages. Construction of private access drive.

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 20 October 2016.

Decision

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

Reasons

2. The application is for an award of costs in relation to the appeal. I have considered this application in light of the Planning Practice Guidance (the PPG). 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 at Paragraph 047¹ lists examples of unreasonable behaviour which may result in an award of costs. The failure to agree a Statement of Common Ground (SCG) is one such example. However, the Procedural Guide² states that a SCG is only normally agreed for an appeal proceeding by a hearing or an inquiry and therefore on this occasion, a SCG was not essential. Whilst a SCG could have helped the parties agree areas of disagreement, the evidence presented clarified the view of the parties and therefore the absence of a SCG would have had little bearing on the merits of the appeal overall. The Council explained why it would not be agreeing to a SCG. In all, therefore, I find that the local planning authority did not behave unreasonably in declining to agree to a SCG.
4. There are circumstances where it is necessary to accept evidence/information after the final deadlines have passed. Whilst the acceptance of a statement does not fall within the exceptions listed, in this case the Council's statement

¹ Paragraph: 047 Reference ID: 16-047-20140306

² The Planning Inspectorate, Procedural Guide, Planning Appeals, England (5 August 2016)

was accepted after the deadline date on the basis of recent Case Law³. Case law confirms that evidence should not simply be rejected because it is late, but that consideration should be given to natural justice and giving parties a fair opportunity to comment; it was on these bases that the Council was invited to submit its statement after the deadline date. The timescales were such that the appellant had sufficient time to respond. Furthermore, the Council's decision on the planning application was against the Officer's recommendation and therefore the statement was considered necessary; there would have been limited evidence to justify the local planning authority's reasons for refusal without it. In all, therefore, I find that the Council did not behave unreasonably.

5. The Council's Statement of Case (SoC) elaborates on the conclusions of the Planning Committee meeting where Members refused the planning application. The SoC also gives reasons for the Council's conclusions on the proposed development. Whilst the reasoning is at times vague and lacking in detail and the evidence and objective analysis to substantiate each reason for refusal is limited, it is not devoid of objective analysis or reasoning. An explanation is given of the Council's concern in relation to the site and its surroundings and conclusions are drawn accordingly. In all, therefore, I do not find that the reasons for refusal are wholly unjustified and as such that the Council behaved unreasonably.

Conclusion

6. In light of the above I have found that the Council did not behave unreasonably. I conclude, therefore, that an award of costs towards the expense of the appeal is not justified.

R Walmsley

Inspector

³ Wainhomes v SSCLG and Wiltshire Council v SSCLG & others