
Costs Decision

Site visit made on 10 January 2017

by David L Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC

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

Decision date: 6th February 2017

Costs application in relation to Appeal Ref: APP/T0355/W/16/3154135 9 Llanvair Close, Ascot SL5 9HX

- 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 Martin Brebner, Wentworth Homes for a full award of costs against Council of the Royal Borough of Windsor and Maidenhead.
 - The appeal was against the refusal to grant planning permission for the erection of three detached, two storey dwelling houses and new access driveways following the demolition of 9 Llanvair Close. Revision to application 14/03801.
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Decision

1. The application of costs is refused.

Reasons

2. The Planning Practice Guidance 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.
3. The PPG also 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; makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis; or presents objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated were acceptable.
4. Moreover, whilst the Council is not duty-bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate *on planning grounds* why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
5. In summary the appellant states the Council's decision is manifestly unreasonable thereby causing the appellant to incur considerable costs pursuing an appeal that should not have been necessary. Further, the Council has failed to produce evidence to substantiate each reason for refusal on appeal and has made vague, generalised or inaccurate assertions about the proposal's impact. Finally, the Council persists in objecting to elements of a scheme which the Planning Inspectorate has previously indicated to be acceptable.
6. I do have some sympathy for the appellant, who has endeavoured to interpret the reasoning of the previous Inspector and amend the scheme such that it overcomes the identified harms previously set out. The fact that officers found

that the amended scheme had achieved this aim, carrying a recommendation of approval but which was not accepted by members, must have added to their disappointment at the outcome to ultimately refuse the proposals.

7. However, as the appellant accepts, the respective schemes are different. Aside from the remodelling of the access the principal change has been the reduction in scape of the dwelling on plot 3 and its removal to a greater distance from the northern boundary. This has in turn necessitated a reconfiguring of the plots on the site, including a revision to the boundary alignment between plots 2 and 3 actually during the appeal process itself in order to resolve the sensitive relationships between each dwelling.
8. It is not right to say that the members, in considering the key issues of character and living conditions, have not considered these matters in some detail. The submissions of a Ward Councillor reflect a detailed analysis of the revised scheme, which no doubt informed debate on the matter during the course of the determination of the application.
9. This is a sensitive environment to accommodate new development reflected in the detailed assessment of its character and a development plan policy context that anticipates such development passing stringent tests in order that this character is maintained. The issues in this case are in my view finely balanced, and open to informed and considered interpretation. Although I have concluded the proposals would on balance avoid harm, I do not consider others have acted unreasonably in coming to an alternative conclusion on such a balanced judgement.
10. Moreover, the Council are careful to frame their objections against development plan policy, drawn both from the local plan and the neighbourhood plan. Policy DG2 of the latter is the one critical to any interpretation of an effect on character. Whilst the appellant is right to point out that this policy requires the decision maker to ensure that new development is 'similar in density, footprint, separation, scale and bulk of buildings in the surrounding area generally', it also requires that account be taken of 'neighbouring properties in particular'. There is a degree of tension between these two components I accept, but it must be for the decision maker to determine the scope of the relevant context in each case.
11. I have disagreed with the Council's narrow interpretation of what may constitute 'neighbouring properties' in this instance but again, on balance I do not consider that can be held to have acted unreasonably in reaching the conclusions they did in relation to the proposals before them.
12. For these reasons therefore I conclude that the Council has not acted unreasonably in refusing the proposals and the appellant has not incurred unnecessary expense in bringing the appeal forward. Accordingly the application is refused and no award is made in respect of the appeal.

David Morgan

Inspector