
Costs Decision

Site visit made on 23 January 2017

by Jonathan Manning BSc (Hons) MA MRTPI

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

Decision date: 09 February 2017

Costs application in relation to Appeal Ref: APP/F0114/D/16/3165355 23 Lymore Avenue, Bath, BA2 1BA

- 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 Mrs Josephine Vercoe for a full award of costs against Bath & North East Somerset Council.
 - The appeal was against the refusal of planning permission for demolition of existing single storey rear extension and erection of side and rear, single storey extension.
-

Decision

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

Reasons

2. The Government's Planning Practice Guidance (PPG) at Paragraph 030 (Reference ID: 16-030-20140306) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The appellant is of the view that the Council has behaved unreasonably in a substantive way and procedurally during the determination of the application.
 3. Paragraph 049 (Reference ID: 16-049-20140306) of the PPG sets out the types of substantive behaviour that might lead to an award of costs, which includes vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. The appellant maintains that the Council did not follow its stated processes when determining planning applications and its decision was based on assertions, which were not required to be backed-up by evidence.
 4. The appellant is of the view that the application should not have been referred to the Development Management Committee (DMC) and the Local Councillor who requested this action did not provide any fact based evidence to support their concerns. Further, the appellant has set out that they believe the chair of the DMC failed to consider the matter against the Council's published criteria when concluding that the application was controversial. It is clear from the evidence before me that the Local Councillor's concerns were based on material planning considerations, which were set out in their representation to the consultation and I am not satisfied that there has been any unreasonable behaviour in this regard. Matters such as character and appearance, the effect on the living conditions of neighbouring residents and parking can be very subjective and in many cases controversial, due to such subjectivity. There is
-

- no reason for me to conclude that the chair of the DMC behaved unreasonably by granting the request of the Local Councillor for the application to be referred to the DMC.
5. Whilst I acknowledge that it is unfortunate that the Local Councillor was allowed to speak beyond their five minute duration at the DMC, I am not convinced that this significantly contributed to the application being refused or represents unreasonable behaviour as described in the PPG. It is evident to me that the merits of the case were discussed at length at the DMC before a decision was made. Further, disagreements between the DMC members are common and form part of the debate.
 6. I note the concerns of the appellant with regard to the suggested discrepancies between the matters on which the motion was carried to refuse the application and those matters set out in the reason for refusal. However, it is overly time consuming to agree word for word each reason for refusal during the DMC meeting, which normally considers numerous planning applications at a time. I consider the reasons for refusal reflect matters that were discussed at the DMC and did not come out of the blue and were not made up after the meeting.
 7. I accept that the Committee Members discussed matters not strictly related to planning, as well as matters which were not included in the reasons for refusal. However, I consider that the reasons for refusal are not vague and are based on the policy requirements of the development plan, namely policies D.2 and D.4 of the Bath and North East Somerset Local Plan including minerals and waste policies (2007).
 8. I fully acknowledge that the Council refused permission contrary to its Officer's recommendation and the advice given by the senior planning officer at the DMC meeting. However, such a circumstance is common and in itself does not represent unreasonable behaviour. As set out above, matters such as character and appearance and the effect on the living conditions of neighbouring residents are very subjective and the DMC members were entitled to take a different view to that recommended by the Council's planning officer, particularly given the genuine concerns of interested parties.
 9. Further to this, it is clear that the decision was deferred at the August Committee Meeting until the September Committee Meeting to allow for a site visit to take place. I consider that the DMC members were therefore fully conversant with the appeal site and what was proposed and did not rely on vague, generalised or inaccurate assertions. The fact that I took a different view to the Council in my appeal decision on these subjective matters does not mean that it has acted unreasonably and whilst not agreeing with them, I understand their concerns. I am also mindful that because of the nature of the Householder Appeal Service, the Council are not able to submit an appeal statement in order to provide further justification for their reasons for refusal.
 10. For all of the reasons set out above, I consider that the Council has not acted unreasonably, as set out in the PPG. Consequently, an award of costs is not justified.

Jonathan Manning

INSPECTOR