
Costs Decision

Site visit made on 21 February 2017

by Debbie Moore BSc (HONS) MCD MRTPI PGDip

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

Decision date: 24 February 2017.

Costs application in relation to Appeal Ref: APP/F0114/W/16/3163717 Former Rockery Tea Gardens, North Road, Combe Down, Bath BA2 5DN

- 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 Freemantle Capital (Gainsborough) Ltd for a full award of costs against Bath & North East Somerset Council.
 - The appeal was against the refusal to grant permission for the development of land carried out without complying with a condition subject to which a previous planning permission was granted.
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Decision

1. The application for an award 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 applicant considers that the Council has acted unreasonably by rejecting the advice of the Council's ecologist and Natural England without evidence. The applicant states that a significant amount of time and cost has been expended to produce further evidence.
 4. Whilst the Council is not duty bound to follow the advice of its professional officers, if a contrary view is taken it must be based on sound evidence. The Council advises that Members of the Development Management Committee understood the views of the Planning Officer, as well as those of the Council's ecologist and Natural England. Nonetheless, they were of the view that the use of Smart Glass was a more effective solution to the issue of light spill and offered a greater level of protection to the habitat of the protected species.
 5. It is clear that the Members attached significant weight to the Appeal Decision Ref. APP/F0114/A/14/2229416, in particular condition No 11 which states that: "No development shall take place until a technical specification has been submitted to and approved in writing by the local planning authority to demonstrate that the glazing to all the windows to the dwellinghouse hereby permitted will limit any light spill to a minimum and acceptable level. The development shall be carried out in accordance with the approved details and permanently retained".
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6. The reason for the condition states: "In the interests of ecology and the living conditions of the occupants of neighbouring properties, conditions are imposed that require details of all external lighting and details of the glazing of all windows to the proposed dwelling in order to limit any light spill to a minimum level".
7. The Committee was not persuaded that the alternative scheme would limit light spill to a minimum level, and it concluded that the use of technical glazing would be more effective. As set out in my Decision, it is not clear from the Technical Report¹, or from the Officer's Committee Report, how compliance with the lighting design requirements would be achieved or what effect the reduced fence height would have on the results analysis. Although the Officer's Report refers to negotiation with the appellant, the reasoning which underpins the Officer's recommendation is relatively brief. In view of this, and the concerns about the Technical Report raised by interested parties, it is not unreasonable for Members to reject the advice of the professional officers.
8. I am satisfied that Members considered the information before them and came to an evidence based decision. Consequently, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is, therefore, not justified.

Debbie Moore

Inspector

¹ Ref 0435-DFL-TR-001_B