
Costs Decision

Site visit made on 27 February 2017

by Veronica Bond LLB (Hons), Solicitor (non-practising)

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

Decision date: 21 March 2017

Costs application in relation to Appeal Ref: APP/Y3940/W/16/3164693 Ashley, Common Road, Malmesbury, Wiltshire SN16 0HN

- 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 & Mrs C Beardsmore for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for erection of two detached dwellings and associated landscaping following the demolition of the existing dwelling.
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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 basis for the appellant's costs application is essentially that the Council: prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failed to produce evidence to substantiate each reason for refusal on appeal; made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The decision of the Council was taken contrary to the recommendation of the Planning Officer. This does not though render that decision automatically unreasonable. Indeed, the Council is not bound to follow its officer's recommendation and it is apparent that the Planning Officer's decision was an 'on balance' one. It is clear that Members had regard to the Officer's report but formed a different judgment.
5. I have found against the Council in respect of the main issue relating to character and appearance but again this does not necessarily mean any unreasonable behaviour on the part of the Council. I have found in favour of the Council in respect of the second main issue relating to living conditions. Further, both matters of character and appearance, and relating to living conditions impact do involve a degree of subjective assessment. As such, the Council has not prevented or delayed development which clearly should have been permitted.
6. Taking together the Committee Minutes and Council's appeal statement, specific concerns were raised in respect of both main issues with these relating

to the size of the plot and proximity to neighbouring properties, the relative heights of properties, and the scale and design of the proposed dwellings. In this way, the Council has provided evidence to substantiate its reasons for refusal and has not made vague, generalised or inaccurate assertions about the proposal's impact.

7. Although the Committee Minutes make no reference to 'amenity' as per the decision notice, clearly the impact on neighbouring properties was considered and deemed overbearing. Whilst the reasons for refusal contained in the decision notice could be more detailed, they are not unacceptably generalised and make reference to the aspects of the proposed development which are considered to be out of character, and the form of loss of amenity in question. The phrases 'out of character' and 'contrived and cramped' are stated in the context of more specific concerns also being referenced.
8. Evidently the Committee Minutes do not represent a verbatim account of the debate, but nonetheless they contain key pertinent information such as to identify the Members' concerns. The Council's Statement clarifies that the Members' decision as to a loss of amenity was a matter of planning judgment but also specifies the harm that the Members identified by reason of the scale and proximity of the proposed development having an overbearing impact. There is no indication that Members assumed an overbearing impact based only on height –they had before them the application plans, with some also having the benefit of a site visit.
9. There is no evidence that the Member's decision was based solely upon the level of objection to the application, and indeed, I have found that the decision has been properly substantiated. There is no substantive evidence that the Members misunderstood the proposal before them.
10. Although I can understand the appellant's frustration at receiving a refusal contrary to Officer recommendation, given the efforts involved in finding a mutually agreeable solution, nonetheless, I find no unreasonable behaviour on the part of the Council.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that an award of costs is not justified.

Veronica Bond

INSPECTOR