
Costs Decision

Site visit made on 21 March 2017

by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI

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

Decision date: 23rd March 2017

Costs application in relation to Appeal Ref: APP/H1840/W/16/3165331 Two Oaks, Besford Road, Wadborough, Besford WR8 9AN

- 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 G Steward for a full award of costs against Wychavon District Council.
 - The appeal was against the refusal of planning permission for replacement dwelling and associated access.
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Decision

1. The application is refused.

Reasons

2. The Planning Practice Guidance advises that, 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 the costs to incur unnecessary or wasted expense in the appeal process.
 3. The application is for a full award of costs and the response by the Council has been made in writing and will not be repeated here in any detail. The applicant considers that the actions of the Council resulted in unnecessary expense and that there were both procedural and substantive aspects involved.
 4. Dealing with procedural aspects first, the applicant suggests that the Council introduced new grounds for refusal that did not appear in the decision notice. This related to Policy SWDP 18 sub-section (ii) and Policy SWDP 2. Dealing with SWDP 18, it appears to me that this policy needs to be read in its entirety; each sub-section has to be satisfied. The Council was selective in identifying sub-sections (iii) and (iv) but this was purely because it was these criteria that were its main concerns. Turning to SWDP 2, this is a strategic settlement policy that sets the basis for all subsequent housing policies. I agree with the Council that there is a direct link with SWDP 18, in other words it is useful to the understanding of SWDP 18. Both national and local policy restrict residential development in the countryside, unless there are very special circumstances that justify making an exception. Having SWDP 18 drawn to my attention, it was incumbent to read this policy in its entirety and to weigh the evidence for and against as a relevant policy for replacement dwellings in the countryside.
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5. The applicant also suggests that the Council has relied on inaccurate information in reaching its decision. Reference is made to the Tree Preservation Order (TPO) that exists at this location. I do not believe reference to "some" trees being covered in what is a blanket TPO is of any significance. The point was made by the applicant that the trees were protected and would constitute a potential impediment to either extending the bungalow or replacing the bungalow in situ. It was the impediment that was critical to my consideration and that the trees were protected through TPO legislation. I cannot see how the Council's statement in so far as it represents an inaccuracy has had any bearing on the applicant's case whatsoever.
 6. On a similar vein, references to the location of settlements are rather academic. The parties agreed that the site was located in the open countryside and as far as I am concerned Policy SWDP 18 applied. I cannot see how this would have resulted in unnecessary expenditure – the applicant provided evidence that supported his contention that an exception to SWDP 18 should be made. In the event, I disagreed with such evidence. Also on the question of degree of prominence within the landscape, I also reached the conclusion that the site appeared far more prominent within this landscape setting. This is a matter of judgment. I would agree that protection of openness is largely a concept normally associated with Green Belt policy. However openness in that context can have both a spatial quality and a site specific quality. Visual amenity is a relevant issue associated with 'openness' and importantly here in terms of the site specific aspect. I therefore cannot criticise the Council and do not accept that any confusion has occurred.
 7. Turning to the substantive elements of this application, the applicant suggests that the Council failed to follow the correct approach in determining the original application proposal. This is a matter for the Courts. However paragraphs 11-13 serve to acknowledge the primacy of the development plan as a starting point for decision making. The High Court judgement¹ referred to related to an Inspector's decision to allow an appeal for a development outside the settlement limits on the basis of the development constituting sustainable development. This is not particularly relevant to the case that was before the Council here particularly given section 55 of the National Planning Policy Framework. I have determined the appeal on the basis of an up-to-date development plan, together with all other material considerations. I do not accept the applicant's criticisms or that unnecessary expense has been incurred.
 8. In relation to the application of criterion (iii) to SWDP 18, I would agree with the Council that reference to a 30% increase is indicative and that the word "disproportionate" is a more valuable and appropriate definition. I concluded on the basis that the development would have a quite different feel to the bungalow that it would replace. I do not necessarily accept that a laborious assessment against SWDP 25 was entirely necessary. The application and appeal fell on the substantive reasoning of the Council in that the development would fail to integrate into this rural landscape setting. I also agreed with the Council that the proposed building would break into an

¹ East Staffordshire Borough Council v Secretary of State for Communities and Local Government and Barwood Strategic Land II LLP [2016] EWHC 2973 (Admin) dated 22 November 2016

undeveloped countryside setting which would have greater prominence in landscape terms. These are matters of judgment.

9. I find that the Council did not act unreasonably in reaching the decision it made on the application, and nor do I consider the applicant has incurred unnecessary or wasted expense. I therefore conclude that an award of costs is not justified.

Gareth W Thomas

INSPECTOR