
Costs Decisions

Site visit made on 26 January 2017

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

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

Decision date: 23 May 2017

Costs application 1 in relation to Appeal Ref: APP/Y3940/W/16/3160717 Building/Land, Dragon Lane, Manningford Bruce SN9 6JE

- 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 John Palmer for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for demolition of existing building and construction of single two-bedroom dwelling within existing building footprint.
-

Costs application 2 in relation to Appeal Ref: APP/Y3940/W/16/3160717 Building/Land, Dragon Lane, Manningford Bruce SN9 6JE

- 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 Wiltshire Council for a full award of costs against Mr John Palmer.
 - The appeal was against the refusal of planning permission for demolition of existing building and construction of single two-bedroom dwelling within existing building footprint.
-

Decision

1. Costs application 1 is dismissed and costs application 2 is dismissed.

Procedural Matters

2. For clarity, I refer to the applicant as the appellant in respect of application 1 and as the Council for application 2.
3. I have taken into account the Government's Planning Practice Guidance (PPG), issued on 6 March 2014, in reaching my decision.

Reasons

4. The PPG 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 costs to incur unnecessary or wasted expense in the appeal process.

Costs application 1

5. The appellant firstly claims that the Council acted unreasonably in refusing planning permission on the basis that it refused to consider the proposal on its
-

own merits, preferring to rely on reference to a nearby historic case Ref K/32271. That proposal was dismissed on appeal in 1996, Ref T/APP/E3905/A/96/262464/P7, relating to a proposed single dwelling on a site which would have included part of that relating to the appeal concerned here. The appellant remarks that that other appeal proposal was in a different location, a different proposal with substantial changes to surrounding plots and site context over the intervening years. Secondly it is claimed that the Council has unreasonably interpreted the definition of previously developed land as set out in the National Planning Policy Framework, whereby the existing building proposed to be redeveloped retains its outward appearance.

6. On the first issue, I am satisfied that whilst the Council reasonably made reference to that 1996 appeal decision in its officer report, it fundamentally considered the application on its own merits, taking account of the site location and all relevant evidence. Furthermore, although that other appeal was some time ago, I found in my appeal decision that the pattern of development has remained largely unchanged since then. Additionally, the Council clearly set out its reasons for refusal in its decision notice, having regard to relevant development plan policies and explained that reason clearly in its officer report and appeal statement. This is notwithstanding my finding in the appeal decision that the proposal would not be at odds with Core Policies 1 and 48 of the Wiltshire Core Strategy. For these reasons, I do not find that unreasonable weight was given to the 1996 appeal decision.
7. On the second issue, notwithstanding my finding in the appeal decision in respect of the visibility of the existing building, the Council clearly explained in its officer report and appeal statement its reasoning in respect of its view that it had blended into the landscape. Whether or not the site was in agricultural use was not raised in the officer report at the application decision making stage in relation to the definition of previously developed land. Nevertheless, as I found to be the case in my appeal decision, whether or not the site is defined as previously developed land was not a critical determining factor in this case.

Costs application 2

8. The Council claims that the proposal is clearly not in accordance with the up to date Wiltshire Core Strategy policies, having regard to restrictions to infill only and then subject to conditions; and that the appellant has placed significant weight on the claim that the site is previously developed land, ignoring the fact that the definition of such excludes that land has been occupied by agricultural buildings.
9. Notwithstanding my conclusions on the appeal and advice provided by the Council at the pre-application stage, I am satisfied that the appellant, as evidenced in the appeal submissions, fully explained his case in having regard to the relevant development plan policies. Furthermore, in respect of the 1996 appeal decision, notwithstanding my findings referred to above, there are differences in terms of the location and nature of development, including, in the appeal case at hand, the replacement of an existing building. As such, I consider that it would not necessarily have been obvious that the proposal had no reasonable prospect of success in this respect.
10. In respect of the issue of previously developed land, I found in my appeal decision that it was inconclusive as to whether or not the site has a lawful

agricultural use. This factor, based on the submitted evidence, was therefore not clear cut.

Conclusion

11. For the above reasons, I find that the Council did not behave unreasonably in determining the application and that the appellant did not behave unreasonably in making and persisting with the appeal. As such, neither the appellant's costs in pursuing the appeal or the Council's costs in responding to it were unnecessarily incurred or wasted. For these reasons, and having regard to all other matters raised, neither a full or partial award of costs is justified for either application.

Andrew Dawe

INSPECTOR