
Costs Decision

Site visit made on 25 April 2017

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

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

Decision date: 01 June 2017

Costs application in relation to Appeal Ref: APP/J3720/W/17/3167623 Mayfield Farm, Bear Lane, Henley-in-Arden B95 5JJ

- 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 J Wilson (Oakley Mayfield Limited) for a full award of costs against Stratford-on-Avon District Council.
 - The appeal was against the refusal of planning permission for the demolition of existing workshops and the erection of 8no. detached dwellings (all matters reserved except for access) without complying with a condition attached to planning permission Ref 16/03517/OUT, dated 19 April 2016.
-

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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 application for costs alleges that the Council has imposed a condition that is not necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects. Thus it is submitted that it does not comply with the guidance in the National Planning Policy Framework or the Planning Practice Guidance on the use of planning conditions.
 4. No case was made in the main appeal submissions questioning whether the condition removing permitted development rights was relevant to planning and the development to be permitted, enforceable or precise and no further evidence regarding those aspects is present in the application. Therefore, failure to meet those requirements has not been shown and I do not consider that they have not been met. Rather the main appeal centred on whether 'exceptional circumstances' existed which would justify the condition, in terms of necessity and reasonableness.
 5. It is further suggested that the Council chose to ignore the submissions, including a Counsel's opinion, in the application to remove the condition. It is also stated that in refusing that application, which is the subject of the associated appeal decision, the Council introduced a reason for refusal unrelated to the reasoning and policies referred to in their original reason for imposing the condition. Furthermore, the applicant submits that the Council failed to provide any detailed justification or evidence to demonstrate that
-

exceptional circumstances existed to justify the removal of permitted development rights.

6. I have dealt with questions of whether the condition was necessary and reasonable and whether exceptional circumstances existed in the body of main appeal decision. It is relevant that I largely found in the Council's favour on those matters, subject to minor modification of the condition. Therefore, it follows that, in my view, the Council did not impose a condition that substantively failed to meet those criteria. I also consider that the Council Officer's report represents a relatively detailed assessment and reaches a reasoned conclusion.
7. As submitted in the Council's response to the application for costs, the matters at issue were no 'open-and-shut case', the submission of Counsel's opinion notwithstanding. That is evidenced by the previous appeal decisions, presented by both parties, which reached different conclusions on the legitimacy of similar conditions in the Green Belt and in other protected environments, dependent on the particular circumstances.
8. The Council Officer's Report referred to relevant local and national policy and the elements of the PPG that needed to be considered when imposing such conditions. There could perhaps have been a fuller exposition of the assessment of 'exceptional circumstances'. Ultimately however, the merits of the application were a matter of planning judgment which it is legitimate for the Council to exercise.
9. With regard to the alleged introduction of a reason for refusal unrelated to the reasoning given in the original planning application, both relatively brief rationales refer to the Green Belt and the character of the area or landscape issues. The applicant makes much in his main appeal submission of the reference to the Arden Special Landscape Area and Policy CS.12 in the Decision Notice and Officer's Report, related to the application to remove the condition.¹ However, the Council contend that the reason that Policy CS.12, and indeed Policy AS.10, do not feature in the original reasoning given in the outline planning permission² is because the Core Strategy was still emerging at that point and so could not be given full weight. By the time that the subsequent application to remove the condition was considered, the Core Strategy had been adopted and all policies, which now had full weight, needed to be fully considered.
10. Though some of the other emerging Core Strategy policies are referred to in the reason given in the original permission, I do not find that explanation unconvincing or unreasonable.

Conclusion

11. Therefore, I conclude, for the reasons set out above, that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Jonathan Tudor

INSPECTOR

¹ Ref 16/03474/VARY

² Ref 15/03517/OUT