
Costs Decision

Site visit made on 23 May 2017

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

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

Decision date: 20 June 2017

Costs application in relation to Appeal Ref: APP/W0340/W/17/3168995 67 Chapel Street, Thatcham RG18 4JS

- 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 G Brown for a full award of costs against West Berkshire Council.
 - The appeal was against the refusal of an application for planning permission for the erection of a bungalow.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (the PPG) advises that costs may be awarded against a party who has behaved unreasonably, in either a procedural or substantive way, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The appellants claim that planning permission should not have been refused and that the Council's reasons for refusal were unreasonable and were not based on a robust and fair assessment of the application. They consider that it has not determined similar applications in a consistent manner. They also cite unreasonable behaviour with a previous application and that by defending this appeal they have behaved unreasonably.
4. The PPG provides examples of unreasonable behaviour¹ in terms of the substance of the matter under appeal, which include:-
 - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and,
 - not determining similar cases in a consistent manner;
5. The Council's first reason for refusal, concerning character and appearance, was well founded, stemming directly from its understanding of the pattern of development of the area and how the proposed development might change that character and how it would appear in relation to the characteristic

¹ Paragraph: 049 Reference ID: 16-049-20140306

development form. While I gave significant weight to the existing backland development concluding against any harm to character, the Council's focus on the pattern of development of the wider locality was not unreasonable, and was supported by an objective assessment of the impact of the proposal.

6. I note that one of the dimensions in the Council's statement was incorrect, however it was given as an approximate dimension and its conclusion on character and appearance did not turn so much on the separation of the proposal rather than its presence in the location. The first reason for refusal was based on a fair and robust assessment, and does not amount to unreasonable behaviour.
7. As regards the living conditions of surrounding occupiers, and taking account of the uses of the rooms behind the relevant openings, the density of trees and shrubs on the boundaries and the separation distance from the proposal it is difficult to understand how their privacy would be harmed. Whereas the appellant referred to the uses of the rooms, the dimensions of the separation distances, as well as the Council's own guidance on the matter, the Council did not substantiate its assertions on the impacts which it gave as a reason for refusal. In terms of this issue the Council's reasoning was flawed, and it amounted to unreasonable behaviour.
8. The Council's inaccurate measurement of the garden area of the proposal led it to conclude in its third reason for refusal that the useable area would be insufficient. It did not take into account the additional areas of garden which would accommodate bin and bicycle storage which would relieve the useable area of these functions. It is also unclear which factors distinguished the Council's acceptance of a smaller useable garden area in the adjoining development from this proposal. The Council's reasoning behind the third reason for refusal was based on an inaccurate assessment and suggests that it did not determine similar cases in a consistent manner. In respect of this issue, the Council's behaviour was unreasonable.
9. The fourth reason for refusal draws conclusions against the main issues against the three dimensions of sustainable development. Given my finding above on the issue of character and appearance, it is not an unreasonable summary and does not amount to unreasonable behaviour.
10. This application for costs concerns the planning application the subject of the appeal; I am unable to take into account the claim of unreasonable behaviour relating to an earlier application. As regards the claim of anonymous letters from interested parties, this is an administrative matter in relation to the application and does not relate to costs incurred during the appeal process, and is therefore not a matter before me. Having found the Council's first reason for refusal well substantiated, I reject the claim that the Council behaved unreasonably in defending the appeal. These grounds do not amount to unreasonable behaviour by the Council.

Conclusion

11. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that West Berkshire Council shall pay to Mr & Mrs G Brown the costs of the appeal proceedings described in the heading of this decision and limited to those demonstrable costs incurred in connection with the preparation of evidence regarding the Council's second and third reasons for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to the Council of West Berkshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Patrick Whelan

INSPECTOR