
Costs Decision

Site visit made on 13 June 2017

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 24 July 2017

Costs application in relation to Appeal Ref: APP/Z2830/W/17/3168679 86 Larkhall Lane, Harpole, Northamptonshire NN7 4DF

- 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 Mrs Ioana Vlad for a full award of costs against South Northants District Council.
 - The appeal was against the refusal of planning permission to vary Condition No. 2 (approved plans) attached to planning permission Ref: S/2015/2257/FUL for demolition of existing dormer bungalow and construction of dwelling with altered vehicle access, in order to make alterations to the boundary wall and gates and include solar panels on the roof of the property.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. Paragraph 030 of the National Planning Policy Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 049 of the Guidance states that examples of unreasonable behaviour by local planning authorities include clearly failing to have regard to government policy or its own adopted policies and not determining similar cases in a consistent manner.

Ground 1: Removal of permitted development rights

4. The appellant argues that Condition 11 of planning permission Ref: S/2015/2257/FUL removes permitted development (PD) rights for roof alterations and not solar panel installation. Furthermore, it is claimed that exceptional circumstances do not exist to justify the removal of PD rights. Therefore, in the appellant's view the Council has been unreasonable in limiting PD rights.
5. The Council states that whilst Conditions 11 and 12 of the planning permission Re: S/2015/2257/FUL do not specifically remove PD rights for solar panels under Part 14 of the GPDO, Schedule 2 Part 1 Class C.1 (d)(ii) of the GPDO, which is covered by Condition 11, does not permit development if it would consist of or include the installation, alteration or replacement of solar photovoltaics or thermal equipment.
6. On the basis of the above, I find that the Council was reasonable in its approach to assessing the proposal. Furthermore, having had regard to the reasons given for

reaching its conclusion, I find that the Council was justified in its determination that the solar panels are not PD, in accordance with the GPDO.

Ground 2: The appeal application: permitted development rights

7. The appellant argues that it is not clear whether PD rights have been removed in respect of the installation of solar panels for renewable energy microgeneration, as applies in this case. Conditions 11 and 12 do not remove Class A Part 14 Schedule 2 of the GPDO which specifically permits such development. Furthermore, the appellant states that the Council has demonstrated unreasonable behaviour in seeking to limit PD rights without justification and has not accepted that the appeal development could be undertaken without planning permission.
8. The Council states that it considered whether or not refusal of the solar panels could be justified if they constituted PD under Part 14. The Council acknowledges that Part 14 Class A permits such development. However, as set out in the appeal decision, Paragraph A.2 of Part 14 Class A the GPDO states that development is permitted by Class A subject to conditions. It has been shown that the solar panels do not meet conditions (a) and (b). Therefore, I am satisfied that the Council has reasonably and justifiably found the solar panels not to be PD.

Ground 3: Inconsistent application of policy

9. The appellant points to several other properties with solar panels in Harpole which, the appellant argues, have a greater impact than the appeal scheme. Taking account of the circumstances of these properties, including the extent of solar panels on front elevations and the number of panels visible at each property, it is argued that the Council is being unreasonable in its interpretation and implementation of policy. Furthermore, policy is not being consistently applied to properties in close proximity of the appeal site.
10. The Council states that each proposal must be assessed on its own individual merits. In this case, the appeal site adjoins open countryside which is designated as a special landscape area. As such, development should have respect for and be sympathetic to the character of the area. With regard to other solar panels in Harpole, the Council argues that there are no examples of such a large and excessive number of panels on such prominent elevations in the immediate area. Furthermore, I note that the Council can only apply its policies in response to planning applications, pre-application enquiries or notifications of development received. The Council indicates that since 2000, there have been no enforcement enquiries regarding solar panels in Harpole.
11. Having had regard to the above, I find that whilst other examples provide similarities to the appeal scheme, they also have differences. The Council, as the decision-taker, reasonably assessed the proposal on the basis of the information available at the time and on its own merits. Whilst policy is set, given the differing nature and circumstances of all proposals, a degree of flexibility must be reasonably applied, providing a clear justification for the approach taken. In this case, I find that the Council has done so.
12. Therefore, having considered all of the above and all other matters raised, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

Andrew McCormack

INSPECTOR