
Costs Decision

Site visit made on 18 July 2017

by Amanda Blicq BSc (Hons) MA CMLI

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

Decision date: 08 August 2017

Costs application in relation to Appeal Ref: APP/F0114/W/17/3170157 103 Fairfield Park Road, Bath, Bath and North-East Somerset BA1 6JR

- 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 William Clark for a full award of costs against Bath & North East Somerset Council.
 - The appeal was against the refusal of the Council to grant planning permission for erection of 2 semi-detached dwellings following demolition of existing garages of land rear of 103 and 105 Fairfield Park.
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Decision

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

Reasons

2. Paragraph 030¹ of the *National Planning Practice Guidance* (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 049² of the PPG explains that local planning authorities are at risk of an award of costs if they behave unreasonably with regard to the substance of the matter under appeal, for example by preventing or delaying development which should clearly be permitted having regard to the development plan and other material considerations, by failure to produce evidence to substantiate the reasons for refusal, and by giving vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by objective analysis.
4. The appellant applied for the construction of two semi-detached dwellings on garden plots at Fairfield Park Road. The Council's first reason for refusal states that the development's inappropriate scale, design and siting is considered to result in a building of excessive built form. The reasons for refusal go on to mention overdevelopment of the site, and that when viewed from the rear the development would result in a building which was overly prominent and which failed to respect the established built form. This was considered to result in harm to visual amenities and the policies cited are general policies that taken together require development to respond to local character and distinctiveness.

¹ Reference ID: 16-030-20140306

² Reference ID: 16-049-20140306

5. The officer's report expands on these themes, going into the detail of plot widths, and the scale, height and massing of the development compared to recent development fronting Solsbury Road. It notes that the development would appear overly dominant in views from Fairfield Park Road, (whose dwellings are situated at a notably lower level than the proposal), and beyond. This section of the officer's report concludes that the dwelling would be overlarge on this plot and out of keeping with the pattern of local development.
6. I find nothing in the reasons for refusal or the officer's report that leads me to conclude that the reasons for refusal were vague or unsubstantiated. Furthermore, these reasons for refusal were raised at pre-application stage and were also amplified in the Council's appeal statement.
7. The appellant argues that the development's prominence in views from Fairfield Park Road and beyond has not been amplified at appeal. It is also argued by the appellant that neither the appeal site nor the development would be visible from Fairfield Park Road. However, visual impact from the public domain is not the only consideration when assessing a development's potential impact on the character and appearance of an area, irrespective of any designations of the area.
8. In any case, the development would be highly visible from the rear of opposing dwellings fronting the western side of Fairfield Park Road, and would be likely to be at least partially visible from the rear or gardens of other dwellings in the area. I appreciate that the Council has not provided an analysis of visual impact from further afield but as there is considerable analysis of the development's built form in the context of the immediate area, I am not satisfied that this is sufficient to represent unreasonable behaviour. In any case, the reasons for refusal do not mention views from Fairfield Park Road.
9. Furthermore, I disagree that the Council's statement fails to respond to the appellant's argument as it answers the specific points made. In addition, the Council draws my attention to a previous refusal for a nearby and recent development, that was highlighted by the appellant as supporting evidence. This was refused permission in the first instance for reasons similar to those given here, and supports the Council's argument. I also find it entirely reasonable that the Council did not review its position on receipt of the visualisations. In this instance, the visualisations reinforced my concerns with regard to the bulk of the development when viewed from the rear.
10. With regard to the second reason for refusal, I have concluded that such overlooking as there would be could be mitigated through condition, but that this could aggravate harm to the living conditions of occupiers of Nancledra with regard to light. As such, the Council has not refused permission for a development that could have been allowed through the imposition of a condition.
11. The appellant states that the Council has failed to undertake a proper assessment of development on the south side of Solsbury Way. However, I have concluded that this is not comparable.
12. It is also argued by the appellant that the Council's use of the term visual amenities in the decision notice is meaningless. However, it is appropriate in the context of the character and appearance of the area. In any case the appellant uses the same term in his statement where it is argued that the

development would make a positive contribution to the visual amenities of the area. I give this argument little weight.

13. With regard to the balancing exercise, I have outlined in my Decision why I consider Paragraph 14 of the Framework is not engaged and that consequently there is no need to undertake a further balancing exercise in respect of housing land supply.
14. Consequently, in respect of the first reason for refusal I do not find that the Council has acted unreasonably, and nor do I consider there has been wasted expense. I therefore find that unreasonable behaviour resulting in wasted expense, as described in the PPG, has not been demonstrated. A full award of costs is not justified.

Amanda Blicq

INSPECTOR