



Costs Decision

Site visit made on 6 June 2017

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 8 September 2017

Costs application in relation to Appeal Ref: APP/Q9495/W/17/3168895 Brookdene, Brook Road, Windermere LA23 2ED

- 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 Ms Jane Dixon & Mr Geoff Brown for a full award of costs against Lake District National Park Authority.
 - The appeal was against the refusal of planning permission for the erection of a new dwelling and associated landscaping works.
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Decision

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

Reasons

2. Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of an 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. The award of costs against a local planning authority (LPA) may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal.
3. In this instance, the appellants' claim relies on a substantive argument. The appellants, aware of the Council's concerns regarding the appeal proposal, sought to submit a Daylight and Sunlight Assessment (DSA) prior to the Council's Planning Committee formally considering the proposal. Having regard to the troubled and contentious planning history relating to previous proposals for the development of the appeal site, the Council wanted to closely manage the application and avoid the piecemeal submission of additional, supporting or revised information and documents.
4. From the evidence before me, it appears that this was something that the appellants were fully aware of, even if written agreement to such an approach cannot be demonstrated. Moreover, the appellants state that a DSA had already been prepared prior to the submission of the application now subject to the appeal. Whilst the submission of the document might not have been a validation requirement, and noting that it is also suggested that at that stage officers had no concerns regarding daylight and sunlight, the appellant could nonetheless have chosen to submit the DSA with the application. They did not.
5. The Framework states that LPAs may also be at risk of an award of costs on substantive grounds by unreasonably refusing planning applications. The Framework gives as examples the failure to provide evidence to substantiate each reason for refusal on appeal, or to rely on vague, generalised or

inaccurate assertions about a proposals impact which are unsupported by any objective analysis.

6. I do not find it unreasonable for the Council to rely upon their officer report to set out their case at appeal. The assessment of the effect of the proposal on the living conditions of occupiers of the adjacent property is a matter of judgement, and one that the members of the Committee exercised having visited the appeal site and the adjacent property at Rivendell. The refusal reason did not solely rely on matters relating to daylight and sunlight, but referred also to the effect on outlook and whether the proposed dwelling would have an overbearing impact on the rear, and particularly the rear garden, of Rivendell. The assessment of such matters, in my judgement, goes beyond purely those of sunlight and daylight.
7. I agree that the Council have not provided a robust counter-argument to the appellant's objective analysis of daylight and sunlight at appeal. Had the Council's case rested solely on matters relating to daylight and sunlight then that omission might have proven to be fatal. However, it does not and I am satisfied that the officer report also considered the physical relationship between the proposed dwelling and Rivendell in terms of outlook, taking into account differences in ground levels and the siting and rearward projection of the proposed dwelling. Whilst I have reached a different conclusion to the Council with regard to outlook, I do not accept the appellants' view that had the Council's approach to the DSA been different it would have resulted in a different outcome to the planning application.
8. I have noted the provisions of the Framework with respect to both parties' arguments in relation to the decision making process. However, even if I were to conclude that the Council had behaved unreasonably with regard to their refusal to accept the submission of the DSA, I cannot conclude that the appellants have incurred unnecessary or wasted expense in the appeal process as a DSA had already been undertaken and a report prepared. Furthermore, as matters of daylight and sunlight were not the sole reasons for the Council's conclusions regarding living conditions, a subjective judgement regarding outlook was still required.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated. An award of costs is not therefore justified in this instance.

Graeme Robbie

INSPECTOR