
Costs Decisions

Site visit made on 13 December 2017

by Stephen Hawkins MA MRTPI

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

Decision date: 9 January 2018

**Costs application in relation to Appeal A Ref: APP/H3320/D/17/3181066
55 The Sanctuary, Cleeve Park, Chapel Cleeve, Minehead, Somerset
TA24 6JF**

- 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 Dr Penny Rawson for a full award of costs against West Somerset Council.
 - The appeal was against the refusal of planning permission for a porch/reception with access lobby to it.
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**Costs application in relation to Appeal B Ref: APP/H3320/D/17/3181069
55 The Sanctuary, Cleeve Park, Chapel Cleeve, Minehead, Somerset
TA24 6JF**

- 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 Dr Penny Rawson for a full award of costs against West Somerset Council.
 - The appeal was against the refusal of planning permission for a porch/reception with access lobby to it.
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Decision

1. Both applications for an award of costs are refused.

Background

2. The Planning Practice Guidance (PPG) 'Appeals' section advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). Guidance on what is meant by 'unreasonable' is in paragraph 031. The applications for costs were made in writing in accordance with the guidance at paragraph 035.
3. Both awards of costs are sought on substantive grounds. Paragraph 047 of the PPG provides examples of the type of unreasonable behaviour that may put a Council at risk of an award of costs concerning the substance of the case. This can include preventing or delaying development which should clearly be permitted having regard to its accordance with the Development Plan national policy and any other considerations, failing to produce evidence to substantiate reasons for refusal and making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by objective analysis.

Reasons-Appeal A

4. Broadly, the appellant considers that the Council incorrectly assessed the size and nature of the proposal, it failed to judge the application on its individual planning merits by referring to previous applications, it did not properly assess the character and appearance of the area, it gave undue weight to Policy BD/3 of the adopted West Somerset Local Plan (LP) and the status of the Article 4 Direction is unclear.
5. The proposal would be a significantly sized addition, given the modest scale of the dwelling. Consequently, whilst the Council's calculation of the proposed floorspace is different to the appellant's, it does not suggest any significant overestimation of the scale of the proposal. The Council's description of the proposal as a 'porch' is concise and does not suggest any significant lack of accuracy in its assessment.
6. As the appeal site has an extensive recent planning history, the delegated report sets this out in some detail. The planning history of a site will almost always be a material consideration in determining development proposals. Therefore, the proposal had to be assessed in the context of previous schemes. There is nothing to suggest that the Council placed undue weight on decisions made in respect of those previous schemes when assessing the planning merits of the proposal.
7. The Council identified the key visual qualities of the area and assessed the proposal against them in a manner proportionate to the scale of the development. Whilst I appreciate that the appellant does not agree with this assessment, it was entirely legitimate for the Council to reach the conclusions it did based on its own interpretation of the character and appearance of the area and their conclusions are soundly justified.
8. Planning law requires development proposals to be determined in accordance with the Development Plan, unless material considerations indicate otherwise. Although of some age, LP Policy BD/3 remains part of the Development Plan and it is consistent with the National Planning Policy Framework. Therefore, the Council were correct to afford the weight it did to that policy. The Council set out the relevance of the Article 4 Direction to the proposal in the report. There does not appear to have been any doubt about its purpose as a means of controlling development otherwise permitted by a Development Order, or its status.
9. Therefore, the Council produced substantial, relevant and specific evidence in the delegated report which clearly supported its conclusions that the proposal would unacceptably harm the character and appearance of the area. Consequently, I find that the Council's reason for refusal stands up to objective scrutiny and it has been substantiated at appeal. I acknowledge the appellant's sense of frustration in her attempts to enlarge her property and appreciate that she wished to minimise building costs by erecting the porch at the same time as the permitted rear extension. Nevertheless, for the above reasons I have not found anything to suggest that the Council acted in a manner similar to any of the examples of unreasonable behaviour referred to in the PPG. Accordingly, the appellant has not been put to the expense of an appeal which would otherwise have been unnecessary.

Reasons-Appeal B

10. Broadly, the appellant considers that in refusing the application against the recommendation of its own officers, the Council's Planning Committee incorrectly assessed the size and nature of the proposal, it did not properly assess the character and appearance of the area, it made reference to an irrelevant consideration in the Special Landscape Area (SLA) and it gave undue weight to LP Policy BD/3 and the Article 4 Direction.
11. Although the Council is not bound by the advice of its officers, it still has to produce evidence to substantiate the reason for reaching that decision. The Council's case at appeal largely rests on its reason for refusal. Even so, the Planning Committee report indicates that the planning considerations in this case were finely balanced. Old Cleeve Parish Council and several interested parties held firm views which were clearly articulated and which interpreted the scale and impact of the proposal on the character and appearance of the surrounding area in a different manner to Council Officers. Against this background I am not convinced that any lack of clarity concerning the size of the proposal, its description as a porch or how the application was otherwise handled and discussed materially affected the outcome of the Committee's deliberations. Consequently, although I reached a different conclusion on the merits of the case, the Council's decision was underpinned by a body of evidence.
12. Whilst the Council did not explain the relevance of the SLA to the proposal, neither is there any clear indication that it is referred to other than as part of the context. For reasons described under Appeal A, the Council gave appropriate weight to LP Policy BD/3. The significance of the Article 4 Direction is explained in the report and in the reason for refusal. Accordingly, there is no substantive evidence to suggest that the Council misinterpreted its purpose.
13. As with Appeal A, I acknowledge the appellant's sense of frustration in her attempts to enlarge her property and appreciate that she wished to minimise building costs by erecting the porch at the same time as the permitted rear extension. Nevertheless, for the above reasons I find that the Council's refusal of planning permission in this case also stands up to objective scrutiny and it has been substantiated at the appeal. Therefore, I am not persuaded that the Council acted in a manner similar to any of the examples of unreasonable behaviour referred to in the PPG. Accordingly, in this case also the appellant has not been put to the expense of an appeal which would otherwise have been unnecessary.

Conclusions

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in relation to either Appeal A or Appeal B.

Stephen Hawkins

INSPECTOR