
Costs Decisions

Site visit made on 31 October 2017

by Rory MacLeod BA MRTPI

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

Decision date: 29 January 2018

Costs application in relation to Appeal A Ref: APP/F0114/W/17/3180752 Hay Tor, Old Midford Road, South Stoke, Bath BA2 7DH

- 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 Adrian Done for a full award of costs against Bath & North East Somerset Council.
 - The appeal was against the grant subject to conditions of planning permission for the erection of a single storey extension.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant asserts that the Council in imposing conditions (2) and (3) on planning permission 17/00538/FUL has not followed national guidance on the use of planning conditions, has not provided reasonable justification for their imposition and has been unduly influenced by the Parish Council's representations that such conditions should be imposed. It is claimed that the appellant has incurred unnecessary and wasted expense in making the appeal.
4. The Council considers that the conditions satisfy the relevant tests set out in national guidance and are justified as the submission of recent planning applications indicate the site is under significant development pressures. It considers that the exercise of maximum permitted development options could result in harm to the Green Belt, the Area of Outstanding Natural Beauty (AONB) and to the sensitive open and rural character of the area.
5. The General Permitted Development Order 2015 (GPDO) does not place particular limitations or conditions on permitted development allowances for dwellings in the Green Belt. The erection of extensions and outbuildings in Green Belt locations is therefore considered to be acceptable unless exceptional circumstances can be demonstrated. The GPDO does provide limitations on the size and location within the curtilage of outbuildings within an AONB. But the Council's analysis does not expressly refer to these or to how an outbuilding or outbuildings in the available area could be so harmful to warrant the further limitation of permitted development allowances. Neither is there analysis of any

- particular harm arising from the erection of extensions other than reference to concerns about the exercise of maximum permitted development options.
6. Paragraph 200 of The National Planning Policy Framework (the Framework) states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The desire for the Council to apply detailed consideration in relation to possible impacts on the Green Belt or AONB (the reasons stated for the imposition of the conditions) does not amount to a clear justification to restrict permitted development rights in this instance.
 7. Paragraph 203 of the Framework states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. The delegated report makes it clear that the extension proposed is acceptable in relation to the Green Belt and AONB. It does not state how the extension would be unacceptable if the conditions were not imposed other than in relation to the possible exercise of maximum allowances. Moreover, the appellant could exercise permitted development allowances prior to implementation of the permission.
 8. PPG states in relation to costs at paragraph 49 that a local planning authority's behaviour may give rise to a substantive award of costs through imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the Framework on planning conditions and obligations.
 9. My findings are that the imposition of both conditions is against national guidance and without demonstrating exceptional circumstances amounts to unreasonable behaviour. It has resulted in unnecessary and wasted expense through the subsequent appeal to challenge this decision. A full award of costs is therefore justified.

Costs Order

10. 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 Bath & North East Somerset Council shall pay to Dr Adrian Done, the costs of the appeal proceedings described in the heading of this decision.
11. The applicant is now invited to submit to Bath & North East Somerset 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Rory MacLeod

INSPECTOR