



Costs Decision

Site visit made on 3 July 2019

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2019

Costs application in relation to Appeal Ref: APP/P1615/W/19/3226025 Hill Crest, Stag Hill, Yorkley, Lydney GL15 4TA

- 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 Alan Jones for a partial award of costs against Forest of Dean District Council.
 - The appeal was against the refusal of planning permission for erection of a single storey dwelling and associated works (amended scheme).
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Decision

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

Procedural Matters

2. I have taken into account the Government's Planning Practice Guidance (PPG) in reaching my decision.
3. The appellant has applied for a partial award of costs relating to the period up to the point at which that Council confirmed that it no longer wished to contest the appeal.
4. Whilst I note that my colleague in relation to appeal Ref APP/P1615/W/19/3220230 dismissed an application for costs against the Council, I have determined this application on its own merits.

Reasons

5. The PPG advises that, irrespective of the outcome of the appeal, costs may only 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.
6. The applicant claims that the Council acted unreasonably in not providing a well-reasoned, comprehensive or substantiated planning balance, taking account of material considerations; and, by confirming that it no longer wished to contest the appeal, that the appeal could have been avoided, it not being sufficient or appropriate to simply state that it had changed its position following appeal Ref APP/P1615/W/19/3220230 being allowed. It is claimed that the local planning authority (the LPA) has prevented development which could have been permitted without substantive harm and without conflict with the development plan, national policy and any other material considerations. Additionally it is claimed that the LPA has not produced substantive evidence to support its reason for refusal, with the evidence provided in support being

- vague and generalised and including exaggerated assertions about the proposal's impact.
7. It is further claimed that no consideration was given as to how conditions could be used to overcome the concerns, such as to secure further boundary screening. It is also claimed that the LPA failed to take up the opportunity at the application stage to clarify and agree matters at issue which had it done so would have avoided the appeal or at least some of the unnecessary expense in the latter stages of the appeal.
 8. The Council's reason for refusal does not specifically identify the aspects of amenity for which there was concern. However, the officer report clearly identifies those matters of concern and which I have considered under the main issue in my appeal decision. The officer report also provides adequate substantiation for its concerns, notwithstanding my appeal decision conclusions. I have highlighted that the reference to amenity space size in the Council's Residential Design Guide is an average, this being referred to incorrectly in its officer report as a minimum. Nevertheless, the Council reasonably considered the privacy of prospective residents in light of the juxtaposition of the proposed garden area to the front roadside boundary.
 9. With regard to the policies referred to by the Council in its decision notice, I have found in my appeal decision that most of them were not directly relevant to the main issue at hand due to their more general or strategic nature. However, the Council also referred to policy AP.4 of the Forest of Dean District Council Allocations Plan, which has more direct relevance, and also to the National Planning Policy Framework, the particular paragraph 127 reference being clarified in the officer report. For these reasons, I consider that the Local Planning Authority provided adequate justification within its officer report for its recommendation in policy terms.
 10. As to whether the Council should have considered the use of conditions to address its concerns in respect of privacy, it is set out, albeit briefly, that it considered the position of the garden to be such as to create an area that would not be private. In any case, that was not the only issue of concern raised by the Council, having also raised concern about daylight into one of the proposed bedrooms. Notwithstanding my findings on that matter, it is unclear as to how any conditions would have been able to address the Council's concern in that respect.
 11. I do not have the full details relating to that other appeal decision referred to above. However, it is apparent from the submissions, including the appeal decision, that there were sufficient similarities in terms of the amenity space issues to give the Council justified reason for not wishing to pursue the appeal at hand. In such circumstances I consider that the Council was justified in confirming this position in order to minimise the appeal costs.
 12. The LPA did acknowledge in its conclusion to the officer report the support of national and development plan policies for development such as this in terms of being sustainably located within the settlement boundary. I am therefore satisfied that an adequate planning balance was undertaken.
 13. For the above reasons, I find that the Council has not behaved unreasonably, either procedurally or substantively, in determining the application and in continuing to defend its decision at appeal until confirming that it no longer

wished to contest it, and that, therefore, the applicant's costs in pursuing the appeal were not unnecessarily incurred and wasted. For this reason, neither a partial or full award of costs is justified.

Andrew Dawe

INSPECTOR