
Costs Decision

Site visit made on 21 May 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2019

Costs application in relation to Appeal Ref: APP/F0114/W/19/3220471 Stoneridge, Forefield Rise, Lyncombe, Bath BA2 4PL

- 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 and Mrs R McCabe for a full award of costs against Bath & North East Somerset Council.
 - The appeal was against the refusal of planning permission for the erection of 1 No. dwelling and associated works.
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Decision

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

Reasons

2. Planning Practice Guidance 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 expense in the appeal process.
3. The applicants submit that the Council has acted unreasonably as their decision to refuse the application was inconsistent with their initial advice for a visually unassertive scheme. Furthermore, the applicants consider that the planning judgement of the Council was flawed in giving insufficient weight to the comments of its Landscape Officer and the Bath Preservation Trust, and that their assessment of the baseline heritage conditions was inadequate.
4. Informal advice given in relation to a planning proposal cannot pre-determine the outcome of the formal decision, which must take account of all material factors. In this case these factors included advice contained within the National Planning Policy Framework and an assessment of the subsequently submitted plans. Although the applicants refer to an initial steer in relation to design principles, this does not suggest it was specific to the design proposed. Consequently, I have no firm basis to conclude that the informal advice given was so misleading as to amount to unreasonable behaviour on the part of the Council.
5. The Officer Delegated Report includes the comments of the Landscape Officer and the Bath Preservation Trust along with the other representations received from consultees and interested parties. The apportionment of weight in the assessment of the planning merits of the proposal is however, a matter for the decision maker. The issues raised in those representations were reasonably considered against local and national policy in relation to the merits of the

- case. The evidence suggests that the views were taken into account, albeit that the applicants would have attributed greater significance to them. Therefore, I consider that the Council has not behaved unreasonably in this respect.
6. The reasons for refusal were adequately substantiated by the Council in its delegated officer report and statement of case, that identified the characteristics of the site and significance of the designated heritage assets. I do not consider that the Council failed to properly evaluate the significance of the heritage assets within their context, and as will be seen from my decision I have found that the Council had reasonable concerns about the impact of the proposed development which justified its decision.
 7. Planning Practice Guidance indicates that local planning authorities will be at risk of an award being made against them if they fail to determine similar cases in a consistent manner. Although the Applicants refer to inconsistent decision making in relation to other recent decisions, these are not specified. In any event, each application must be assessed on its own merits. Therefore, on the basis of the evidence before me, I do not consider that it is shown that the Council has an inconsistent approach to decision making that amounts to unreasonable behaviour.
 8. Whilst I accept that the applicants disagree with the planning judgement exercised by the Council this does not point to unreasonable behaviour, rather it points to a material difference of opinion as to the likely impact and acceptability of the proposal. It seems to me that these are the circumstances when it is appropriate that such matters should be tested by appeal.
 9. As a result, it follows that I cannot agree that the Council has acted unreasonably in this case as the main issues related to a question of planning judgement. The appeal provided an opportunity to test the planning judgement made by the Council and the appellant has not been put to unnecessary or wasted expense in doing so.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Helen O'Connor

Inspector