



Costs Decision

Site visit made on 23 July 2019

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 August 2019

Costs application in relation to Appeal Ref: APP/B1740/D/19/3225421 Allens Farm, Rockbourne Road, Sandleheath SP6 1QG

- 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 Richard Peters for a full award of costs against New Forest District Council.
 - The appeal was against the refusal of the Council to grant planning permission for single and two storey additions; front porch; removal of existing conservatory.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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 claims that the Council has acted unreasonably on substantive grounds listed as:
 - a) preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - b) failure to produce evidence to substantiate each reason for refusal on appeal;
 - c) vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;
 - d) refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead;
 - e) acting contrary to, or not following, well-established case law.

Reasons

4. With regard to ground (a), the applicant makes reference to pre-application discussions, and in this context alleges that the Council failed to articulate concerns it later raised in determining the application. The PPG states that although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account. The pre-application discussions in question preceded the planning

application, however they would have been a consideration in determination of the planning application.

5. Within the pre-application advice in question, reference ENQ/18/20881/HDF, the Council sets out a number of considerations and concerns, including the identification of policy conflict. The Council further advises how the applicant might approach stating a case. I see no indication of a commitment within the pre-application advice to approve any particular scheme. Pre-application advice is not therefore a consideration which indicates that the Council should have granted permission.
6. The cost decision referenced by the applicant, APP/J9497/D/17/3185212, describes a case which differs from the current appeal scheme. This is insofar as the decision indicates that the pre-application advice provided by the Council in question was positive. As such this decision does not alter my view.
7. With further regard to ground (a), and additionally ground (e), I acknowledge the applicant's reference to case law in relation to fallback. It is apparent from the officer report that the Council considered the fallback position provided by the lawful development scheme when assessing the proposal. In this regard, even if it provided no detailed comparison of the individual design merits of the 2 schemes, the Council clearly did not agree that the appeal scheme was acceptable in design terms. It logically follows that the Council could not then have reached a conclusion that the appeal scheme would better meet the requirements of a development plan policy that was not applicable to the fallback scheme. In reaching its decision the Council was furthermore entitled to attach weight to the consideration of fallback as it saw fit, and this is indeed in evidence in the balancing exercise included towards the end of the officer report.
8. The officer report similarly considers the potential benefits of removing the conservatory, and reaches a weighted judgement in this regard.
9. With regard to ground (b), the appeal process in this case did not allow the Council to submit an appeal statement in addition to the officer report. The Council did not therefore have the opportunity to substantiate each reason for refusal on appeal, and cannot therefore be considered to have acted unreasonably on this ground.
10. Furthermore, and in regard to of ground (c), the officer report explains why, in the Council's opinion, the proposed development was unacceptable. It is clear that the Council's objections principally related to visual presence and appearance, and intelligible reasons are provided for this. Whilst I may have come to a different view regarding the impact of the development, the Council did not therefore provide vague, generalised or inaccurate assertions about a proposal's impact, which were unsupported by any objective analysis.
11. The applicant has not provided any indication of why ground (d) is relevant. Furthermore, none is otherwise apparent.

Conclusion

12. For the reasons set out above I conclude that the Council did not act unreasonably on the grounds claimed by the applicant. As such it has not been demonstrated that the applicant incurred unnecessary or wasted expense in the appeal process. The application for costs is therefore dismissed.

Benjamin Webb

INSPECTOR