



Costs Decision

Site visit made on 02 April 2019

by Kim Langford Tejrar LLB (Hons) BSc (Hons) PGDIP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th August 2019

Costs application in relation to Appeal Ref: APP/Q3305/W/19/3221545 Park View, Dymotts Cottage Access Road, Lullington, Frome BA11 2PG

- 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 Bryan and Lynette Bendell for a full award of costs against Mendip District Council.
 - The appeal was against the refusal of planning permission for conversion of existing garage, store and home office to residential annex.
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Decision

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

Reasons

2. The 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 Appellant has applied for costs on the basis that the Local Planning Authority (LPA) did not enter a dialogue over the acceptability of the appeal proposal, delayed in making a determination, did not take into account relevant information or supply relevant information, did not substantiate its reasons for refusal, and was inconsistent in its approach in granting planning permissions for similar development elsewhere, thereby leading to an unnecessary appeal.

Delay

4. The LPA determined the application beyond the statutory time limit without having agreed a further extension of time with the applicant. An award of costs may be made on a procedural basis where there was a delay in providing information or a failure to adhere to other deadlines, and on a substantial basis where the development which should clearly be permitted has been delayed. The Appellant has applied for costs on a substantial basis. The appeal scheme conflicts with the policies of the Development Plan. As such it is not a proposal which should clearly be permitted¹ and therefore there is no substantial case for costs. On a procedural basis, decisions on applications should be made as quickly as possible, within the statutory timescales² regardless of the favourability of the scheme. The LPA was therefore acting unreasonably in this respect. However, since the appeal was not made as a result of a failure to

¹ National Planning Policy Framework (the Framework) Paragraph 11(c).

² The Framework Paragraph 47

determine the application but on the basis of its decision making, the LPA's actions in this respect have not resulted in unnecessary or wasted expense for the appeal.

Negotiation, relevant information and consistency in decision making

5. An award of costs may be made on substantive grounds if the LPA was not following well-established caselaw, was not taking into account relevant information, was acting inconsistently, or was persisting in objections to a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
6. The Appellant claims that the LPA failed to consider relevant examples of similar planning permissions, and as a result it also failed to negotiate or show consistency in its decision making. The Appellant provided examples of planning permissions granted by the LPA for large residential extensions or conversions in the vicinity of the appeal site. The LPA states that it did take these examples into account but came to a different conclusion. Whilst examples of other planning permissions can demonstrate that a particular type or style of development is acceptable in principle, the individual merits of each scheme must also be considered. Part of the LPA's reason for refusal cites the effect of the proposal on the character and appearance of the area; I have concurred with this element of the reason for refusal based on the immediate site context and concluded that the appeal proposal would cause unacceptable harm to the rural character of the area, failing to protect local character and distinctiveness. As a result, the LPA was not unreasonable in taking a different approach in respect of the appeal proposal and other development in the area and its approach has not resulted in unnecessary or wasted expense in respect of the appeal.
7. The Appellant further alleges that detailed information related to these example planning permissions was withheld from the Appellant during the application stage, despite formal requests. An award of costs may be made where relevant evidence has been deliberately concealed at planning application stage or where relevant information at appeal when it was previously requested. The LPA has not provided detailed information in respect of the example planning permissions requested at application stage. However, for the reasons outlined above, the planning application and appeal have been determined on individual planning merits and further background information on other permissions has limited relevance to this and has not resulted in unnecessary or wasted expense in respect of the appeal.
8. The Appellant alleges that the LPA failed to take into account clear caselaw precedent which was highlighted during the application process, and that it refused to enter a dialogue about this. The LPA considered the appeal proposal for extensions to an outbuilding to be tantamount to the creation of a separate dwelling in a location where housing growth is contrary to the spatial policies of the Development Plan. The LPA reached this conclusion on the basis that the scheme would include all the necessary facilities for separate occupation. However, well-established caselaw sets out that a separate building within the curtilage of a dwelling can normally be regarded as part and parcel of the main dwellinghouse unless as a matter of fact and degree the building would have a function separate to the main house³. The LPA did not carry out a fact and

³ Uttlesford DC v SSE & White [1992]

degree assessment of the circumstances to determine otherwise, despite being made aware of the caselaw. As such, the LPA's sole reason for refusal did not reflect the proposal and it has persisted with its objections despite clear precedent to the contrary. As this was the sole reason for refusal and a main issue for the appeal, this unreasonable behaviour has resulted in unnecessary and wasted expense in respect of the appeal, despite its dismissal for another reason.

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is 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 Mendip District Council shall pay to Mr and Mrs Bryan and Lynette Bendell, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Mendip District 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.

Kim Langford Tejrar

INSPECTOR