



Costs Decision

Site visit made on 20 February 2019

by Martin S. Lee, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 September 2019

Appeal Ref: APP/F0114/W/18/3216367

The Old Forge, Upper Stanton, Stanton Drew, Bristol BS39 4EG

- 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 M Davis for a full award of costs against the decision of Bath & North East Somerset Council.
 - The application 17/05819/FUL, dated 21 November 2017, was refused by notice dated 25 June 2018.
 - The development proposed is described as the conversion of outbuilding to ancillary residential accommodation to the Old Forge.
-

Decision

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

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. The PPG also clarifies that costs cannot be awarded for the period during the determination of the planning application but behaviour and actions at the time can be taken into account in considering whether or not costs should be awarded.

Reason 1

3. I do not consider the Council justified their use of Policies DW1 (District-wide spatial strategy) and RE4 (essential dwellings for rural workers) in refusal Reason 1. The policies clearly did not apply to the development as proposed. On this basis the Local Planning Authority should have withdrawn their defence of this reason for refusal. Instead they sought to defend Reason 1 on the basis that although they accepted in their Appeal Statement that the proposal complied with all the stated criteria of Policy RE6 (Conversion of rural buildings) that the policy itself did not apply in this case because the building was not agricultural in origin.
4. I have already concluded in the separate Appeal decision letter that the wording of Policy RE6 does not contain any specific caveat limiting its application to a specific type/use of building in a rural location. Nor does the supporting text provide any explicit reference to the policy being intended solely for agricultural buildings. Notwithstanding the Authority's reference to another appeal decision in justification of their interpretation, I do not find any grounds to support such an interpretation in respect of the appeal proposal.

Reason 2

5. I agree with the appellant's contention that the wording employed by the Authority in their reason for refusal is either imprecise and/or confusing. However, I consider the Authority's Statement of Case does provide reasoned argument sufficient to support this reason for refusal.

Reason 3

6. The ability to provide the required visibility splay was in question during the Authority's consideration and determination of the appeal application. As this matter had been resolved and the appellant secured the relevant reduction in wall height prior to submission of the appeal, the Authority correctly took the first opportunity to confirm that they no longer wished to pursue this reason for refusal. No evidence has been presented which would prove the appellant sought to take advantage of the opportunity to engage in post refusal and pre appeal submission discussion with the Authority to reach agreement about these matters on this issue in advance of preparing and submitting their appeal.

Reason 4

7. The appellant refers to guidance the Authority have relied upon for the distance between dwellings and the highway from which they take access and thus the point of waste and recycling collection as a 'building regulations document'. Manual 4 Streets is not 'a building regulations document' but a highways guidance document which applies across both planning and building regulations spheres of development control. I have already concluded in the appeal decision letter that the increased use of the building as a two-bedroom dwelling (even when described and proposed as an ancillary annexe) would be substantial. Permanent residential occupation as a dwelling unit or annex would substantially increase the level of recycling and waste to be transported to the highway collection point.

Conclusion

Reason 1

8. As stated in my appeal decision letter, the appeal building and thus the appeal proposal is covered by the provisions of Policy RE6, not Policies DW1 and RE4 which were used in refusal reason 1. The judgement of the Authority in the application of Policies DW1 and RE4 and the interpretation of the applicability of Policy RE6 needs to be supported by substantiating evidence. Such evidence has not been produced by the Authority.
9. Whilst I appreciate the Authority's reference to another appeal decision, there is no reasonable evidence to support such an interpretation in this case. Accordingly, I find the Authority has behaved unreasonably and that this behaviour has led to unnecessary expense during the appeal process. For this reason, a partial award of costs is justified in relation to refusal reason No 1.

Reasons 2, 3 & 4

10. I find that the Authority has substantiated its reasons for refusal Nos 2, 3 and 4 and in this respect I conclude that there has not been unreasonable behaviour and the appellant has not been the subject of wasted time or expense.

Cost Orders

11. 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 Mr M Davis, the costs of the appeal proceedings described in the heading of this decision in relation to refusal reason No 1 only; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. 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.

Martin S. Lee

INSPECTOR