
Costs Decision

Site visit made on 28 August 2019

by James Taylor BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 November 2019

Costs application in relation to Appeal Ref: APP/C1760/W/19/3233009 Twin Acres, Church Lane, Goodworth Clatford, Andover, Hants SP11 7HL

- 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 & Mrs Joe Li for a full award of costs against Test Valley Borough Council.
 - The appeal was against the refusal of planning permission for the 'construction of a tarmacadam tennis court painted green, with 2.75m high green chainlink fence to run-back area reducing to 1m high to sides of court, on green 40mm dia metal posts'.
-

Decision

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

Reasons

2. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, 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 applicants state that, due to the Council's failure to determine similar cases in a consistent manner and inconsistent application of its policies that they have incurred costs and expense in pursuing an unnecessary appeal. They highlight a planning decision by the same Council (ref: 18/03046/FULLS) which they state has very few differences to the proposal here. That case was allowed on the basis of Policy COM11 of the Test Valley Borough Revised Local Plan DPD Adopted Local Plan 2011-2029 adopted January 2016 (LP). This is a policy that was not applied to the proposal subject of this appeal. Had the Council applied policy COM11, the applicants assert that a different decision would have been reached and the appeal would have been unnecessary.
4. I have had regard to the cited case in my consideration of the appeal and also assessed whether policy COM11 is relevant to the appeal. The issue hangs on whether the proposed development meets the definition of a building. I have addressed this in some detail in my Appeal Decision and reached the same conclusion as the Council. In short, I do not consider that the proposal meets the definition of a building.
5. Furthermore, I am mindful that this case was not part of the justification for the proposed development at the initial planning application stage. Whilst the Council ought to be aware of its decisions on similar matters, that it was not specifically drawn to their attention at the time of their assessment is relevant.

6. The Council's decision notice clearly sets out the reason for refusal and frames it within the context of a relevant development plan policy. The delegated report clearly addresses both parts a) and b) of policy COM2. Furthermore, the Council addresses the information submitted at that time by the applicants, clearly setting out a view as to why a further tennis court proposal in the area (ref: 18/01867/FULLN) did not merit granting planning permission and did not set a precedent to allow the proposal.
7. I find that the Council's decision is framed in a logical manner against the policies of the development plan. They have exercised their planning judgement reasonably and explained material differences to the other application cited by the applicants at the initial application stage.
8. Based on the evidence before me, the example of 18/03046/FULLS, where the alleged main inconsistency in decision making has occurred, appears to be unique in its interpretation of policy COM11 and its application to tennis courts. It appears to be an isolated example. The Council acknowledge the need for consistency but highlight that the pursuit of this ought not result in allowing development that should otherwise be refused. Furthermore, to re-apply the same approach as planning permission 18/03046/FULLS would be inconsistent with a greater number of the Council's decisions on proposed tennis courts in similar contexts.
9. However, the Council have admitted inconsistency in its decision making. They state that this is being addressed at a senior level within the Council. The Planning Practice Guidance sets out that a substantive award of costs may be made for not determining similar cases in a consistent manner.
10. I consider this to be a finely balanced decision. The Council have acknowledged inconsistency in its decision making. However, I agree that the decision with which they have been inconsistent is not one that ought to be replicated. I do not consider that the proposed development can be considered a building. Critically, application 18/03046/FULLS was not an example cited within the applicants' initial planning application to justify their development. As such I have no evidence to indicate that they were relying on it as part of their submission.
11. Therefore, on balance, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated with the case before me.

James Taylor

INSPECTOR