



Costs Decisions

Site visit made on 24 September 2019

by Jonathon Parsons MSc BSc DipTP (Cert Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th December 2019

Costs application in relation to Appeal A Ref: APP/X0415/W/17/3191276 274 and 274A Chartridge Lane, Chesham, Bucks HP5 2SG

- 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 Visao Ltd for a partial award of costs against Chiltern District Council.
- The appeal was against the refusal of planning permission for the retention of Nos 274 and 274A, two storey extension to each, and one two bedroom detached house, one three bedroom detached house, and two four bedroom semi detached houses, together with open fronted car ports and alterations to vehicular access.

Costs application in relation to Appeal B Ref: APP/X0415/W/19/3231699 274 and 274A Chartridge Lane, Chesham, Bucks HP5 2SG

- 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 Visao Ltd for a full award of costs against Chiltern District Council.
- The appeal was against the refusal of planning permission for the demolition of Nos 274 and 274A, the erection of two three bedroom semi detached and one two bedroom detached house, one three bedroom detached house and two four bedroom semi detached houses, together with open fronted car ports and alterations to vehicular access.

Decisions

1. The application for award of costs is refused in Appeal A and allowed in Appeal B in the terms set out below.

Reasons

Appeal A

2. The Planning Practice Guidance (the 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. The High Court quashed the previous Inspector's decision but not the associated cost decision. The cost decision remains extant and therefore the costs application has to be determined solely in respect of the re-determined appeal.
3. In the re-determination appeal, the Council has continued to base its objections on an access arrangement plan, including latest AAP¹. The High Court quashed the previous Inspector's decision because he failed to properly

¹ ITL12517-SK-012A.

consider the applicant's request to consider this later AAP and by failing to take account of this, not providing an assessment why the latest access arrangements were acceptable taking into account highway authority views on it. It was also found a departure from the highway authority views required cogent and compelling reasons. However, the previous Inspector considered cost submissions on the basis of reasons for refusal 1 (highways) and 5 (bin storage and collection), and therefore, if I were to consider this further, I would be straying into matters previously addressed in an earlier extant decision.

4. In terms of the re-determination appeal, attention has been drawn to a purported similar proposal at Long Park at Chesham Bois but as with other schemes, the Council has drawn attention to differences with the present proposal. Importantly, it has indicated that every proposal has to be considered on its individual planning merits.
5. Notwithstanding the quashing of the previous appeal decision, the Inspector's comments on the non-successfully challenged part of the decision remain material. The applicant has argued that the Council has been unreasonable in not re-assessing its case based on these. As with the previous Inspector, I have found no adverse impact arising from the carports on the character and appearance of the area or the dwelling on plot 6 on a neighbouring residents' use of their garden. However, the proposal still fails on the more substantive aspects of these two issues which has resulted in the dismissing of the appeal taking into account housing considerations.
6. On this basis, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated in appeal A, for all the reasons given above.

Appeal B

7. The Planning Practice Guidance (the 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.
8. The refusal of the planning application followed the quashing of the decision on the other appeal proposal on this site by the High Court which has been re-determined in appeal A. In this appeal B, the Council's decision was based on the access arrangement plan (AAP)¹, and a ground floor plan (showing bin storage within the housing part of site). Members refused the proposal solely on highway grounds against an officer recommendation of permission.
9. It is entirely within the remit of Members to come to a different view from that of its professional officers. In these circumstances, the Guidance states that an authority is expected to produce relevant evidence on appeal to support its decision. Although I have come to a different view on the merits of the proposal, it does not follow that unreasonable behaviour occurs.
10. The Council's planning committee was aware that the highway authority and its own officer advising on waste disposal matters had raised no objections to the proposal. The Council should also have been aware of the High Court judgement on appeal proposal A where the judge stated that the views of the highway authority on the proposed access arrangements were highly material, departure from that view would require cogent and compelling views.

11. The Council has expressed considerable concerns about the access arrangements, but this has not been detailed in its evidence. Reference to the site circumstances and planning history does not equate to evidence on highway safety. Furthermore, the Council has not commented on the features of AAP including the provision of passing spaces either side of the access drive. No assessment of the applicant's Transport Note January 2018 and Transport Appeal Statement June 2019, including its traffic movement and conflict probability evidence, has been made. The lack of substantiated evidence to support its objections and any objective analysis of the applicant's evidence results in vague, generalised and inaccurate assertions about the proposal's impact.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated. A full of costs is justified in the preparation of this appeal and cost submission where work is additional to that carried out in respect of appeal A.

Costs Order (Appeal B)

13. 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 Chiltern District Council shall pay to Visao Ltd, 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. The applicant is now invited to submit to Chiltern 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.

Conclusion

14. For the reasons given above, I conclude that application for an award of costs is refused for appeal A but allowed for appeal B on the terms set out above.

Jonathon Parsons

INSPECTOR