
Costs Decision

Site visit made on 4 December 2019

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2020

**Costs application in relation to Appeal Ref: APP/Y3940/W/19/3236701
Land opposite Nos 8 to 10 Vowley View, Royal Wootton Bassett, Wiltshire
SN4 8HT**

- 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 Wiltshire Council for full and partial awards of costs against Cooper Estates Strategic Land Limited.
 - The appeal was against the refusal of planning permission for the erection of a detached two bedroom bungalow.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Guidance advises that parties who pursue an appeal unreasonably without sound grounds for appeal, may have an award of costs made against them. It confirms that awards against appellants may be either substantive, relating to the planning merits of the appeal, or procedural, having regard to behaviour in relation to completing the appeal process. The applicant is seeking a full award of costs on substantive grounds and a partial award of costs on procedural grounds.

Substantive

4. The Guidance confirms that an appellant is at risk of an award of substantive costs being made against them if the appeal or ground or appeal had no reasonable prospect of succeeding. The applicant's claim is based on the multiple planning applications and appeals made by the appellant in respect of the development of the appeal site with a single dwelling, and the quality of the evidence put forward by the appellant to demonstrate that the appeal scheme is appropriate.
5. The situations in which substantive costs may be awarded are listed in the Guidance. Whilst this list is not exhaustive, it includes where the appeal follows a recent appeal decision in respect of the same, or a very similar, development

on the same, or substantially the same site, where the Secretary of State or an Inspector decided the proposal was unacceptable and circumstances have not materially changed in the intervening period. It also includes where the development is clearly not in accordance with the development plan, and no other material considerations are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.

6. I do not find that the appellant has acted unreasonably in making the appeal. The three previous appeal decisions related to different site circumstances and/or development proposals. The appeal decision in 2003¹ predated the permission to erect dwellings to the east of the appeal site, and the decision was made within the context of the appeal site being located adjacent to open countryside. The appeal site context is materially different since the determination of this appeal. The 2015² and 2017³ appeals both related to the development of the site with a detached two storey dwelling positioned at the northern end of the plot, and in both cases the Inspector concluded that the dwelling would adversely affect the living conditions of the occupiers of 2 Brinders Close, in respect of outlook from that property. The current appeal development proposal and reasons for refusal therefore differ significantly from those of the 2015 and 2017 appeals.
7. The current appeal relates to the most recent of three planning applications⁴ for a single storey dwelling on the site, all of which were refused for the same refusal reason in respect of impacts on the character and appearance of the area and on the privacy of future occupants of the appeal scheme. Whilst all three applications were for similar proposals, particularly the 2018 and 2019 applications, the Council elected to determine each application, notwithstanding the power to decline to determine them under Section 70A of the Town and Country Planning Act. Neither of the previous two applications were the subject of appeals, and the appellant has justified why this was the case, having regard to the designation by the Council of the appeal site as a Town and Village Green during the consideration of the 2017 application, and the timing of the subsequent High Court challenge and Court of Appeal decisions.
8. The Council has confirmed that there is no objection in principle to the development of the site with a dwelling. I have not been persuaded by the appellant's case, and I have dismissed the appeal. However, the appellant has put forward arguments in support of the appeal scheme based on the character of the surrounding area and the impact of the adjacent properties upon the privacy of the development. For the above reasons, and since the proposal for a single storey dwelling has not previously been tested on appeal, I find that the appellant is entitled to make the current appeal and has not acted unreasonably in so doing.

Procedural

9. The applicant also claims partial costs on procedural grounds with respect to the appellant's late submission of the Drainage Strategy, after the initial appeal submission date. The Guidance list of types of behaviour that may give rise to

¹ APP/J3910/A/03/1119806

² APP/Y3940/W/15/3132561

³ APP/Y3940/W/17/3169482

⁴ 17/09072/FUL, 18/06845/FUL, and 19/05866/FUL

a procedural award of costs against appellants includes delay in providing information, or other failure to adhere to deadlines. Both parties are agreed that the Drainage Strategy was not included within the appellant's initial appeal documents when the appeal was submitted on 6 September 2019, and that the Council emailed the appellant to request it on the appeal validation date of 15 October 2019. Whilst 3 days elapsed before the appellant emailed the Drainage Strategy to the Council on the morning of 18 October, I do not find that this has amounted to unreasonable behaviour. The appellant's appeal statement makes explicit reference to the Drainage Strategy and summarises its findings, so the Council would have been aware of the existence of the document from the appeal submission date. I do not find that the expense involved in the Council emailing the appellant, and notifying a neighbour, in respect of the outstanding Drainage information, to comprise an unnecessary or wasted expense beyond that which would typically be expected to be associated with the appeal administration.

Conclusion

10. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.