
Costs Decision

Site visit made on 15 October 2019

by L J O'Brien BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th January 2020.

Costs application in relation to Appeal Ref: APP/Y3940/W/19/3233745 36 Reybridge, Lacock SN15 2PF

- 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 C Breach for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for the erection of garage and home office.
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Decision

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

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 states that examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
3. The appellant contends that the Council's reason for refusal ignores the potential to restrict the use of the roof space above the proposed garage for ancillary purposes related to 36 Reybridge through the use of a planning condition. The appellant also states that the Council refused the application based on the independent residential use of the building which was not the nature of the application. Therefore, the appellant believes that this application should not have needed to be determined at appeal and permission should have been granted by the Council.
4. Whilst in my decision on the appeal I have indeed determined that the application was for a garage with an office room above and granted planning permission accordingly, it does not necessarily follow that the Council have acted unreasonably or caused unnecessary or wasted expense.
5. Whether or not a curtilage building potentially capable of independent living would result in a change of use to form a separate dwelling and a new planning unit or can be considered as ancillary is a matter of fact and degree. The Council has clearly set out their reasons for refusing the application on this basis, using evidence and fact to substantiate these reasons, and have reached a judgement in the way they are entitled to.

6. The use of a condition to restrict the use of such a building would not be appropriate where it is considered that the use of the building as ancillary would be so unrealistic that the inevitable consequence of approving this application would be to create an independent dwelling. The Council reached the conclusion that a condition would not be appropriate in this instance for the above reasons and, whilst I have not followed the same line of reasoning in my decision, it was within the Council's remit to come to that decision.
7. The appellant also suggests that the Council has taken an inconsistent approach to decision making on applications of this nature. However, each case must be treated on its own merits and the Council has identified why it considers the respective circumstances of the two decisions not to be directly comparable. Besides, whilst there may be some similarity, the particular details of any two cases are unlikely to be identical.
8. Whilst my final conclusions differ from those reached by the Council, the reasons behind the Council's decision are clearly set out and a matter of judgement. In my view evidence to substantiate the reason for refusal was provided and was supported by objective analysis. Accordingly, I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme and therefore the appeal could not have been avoided.
9. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is not justified.

L J O'Brien

INSPECTOR