
Costs Decision

Site visit made on 9 January 2020

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2020

Costs application in relation to Appeal Ref: APP/Y3940/W/19/3238622 Land to the rear of 107 Bouverie Avenue South, Salisbury SP2 8EA

- 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 and Mrs Williams for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for erection of one dwelling to the rear of 107 Bouverie Avenue South, with associated driveway and parking.
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Decision

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

Reasons

2. Paragraph 028 of 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 local planning authorities 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.
4. Paragraph 049 of the Guidance states that examples of unreasonable behaviour by local planning authorities which may give rise to a substantive award of costs include: preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; 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.
5. The applicant states that the appeal was unnecessary, as, in the overall planning judgement, the proposal should reasonably have been permitted, having regard to the development plan, the National Planning Policy Framework (the Framework) and other material considerations. The applicant asserts that the Council did not provide detailed justification to substantiate their reason for refusal, particularly in respect of the 'tilted balance' under Paragraph 11 of the

- Framework, and that the Council's justification was unsupported by any objective analysis, and was heavily reliant upon third party comments.
6. The reason for refusal as set out in the decision notice is complete, precise, specific and relevant to the application. It also clearly sets out the policies of the Wiltshire Core Strategy, the Creating Places Design Guide SPG and the Framework against which the proposal would be in conflict. This reason has been adequately substantiated by Council in its Officer Report and its Comments in Response to the Appellant's Statement. These documents demonstrate why the Council consider that the proposal would result in harm to the character and appearance of the area and harm to the living conditions of the occupiers of neighbouring properties and the future occupants of the appeal scheme, using the evidence submitted by: the appellant, the Council's observations; statutory consultees; and third parties.
 7. The Officer Report clearly explains how the Council has dealt with the plot to built development ratios provided by the appellant and third parties, and why it has not relied upon the differing figures provided by these parties to reach a view with respect to the impact of the proposal on the character and appearance of the area. It confirms that an assessment of character was made involving inspection of the appeal site and neighbouring properties by the Planning Officer. Furthermore, the refusal reason does not refer to overdevelopment of the site.
 8. The Officer Report has thoroughly responded to concerns raised by third parties, of which there were many, and has also included detailed responses to the appellant's main points. In this respect I do not find that the Council has placed too much weight upon third party objections. The refusal reason is restricted to two main issues of character and appearance and living conditions. Notably, it excludes reference to highway safety and impact on protected trees.
 9. Although I have not been persuaded by the Council's case in respect of the impact of the proposal on the character and appearance of the area, I have been persuaded by its arguments in respect of the harmful impact on the living conditions of neighbours, and I have dismissed the appeal for the reasons set out in the appeal decision. I came to that decision on the basis of my consideration of the details and merits of the scheme, having regard to all the evidence and representations submitted. In so doing, I have applied the 'tilted balance' as required by Paragraph 11 of the Framework, and concluded that, when assessed against the policies in the Framework taken as a whole, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.
 10. The Officer Report indicates that the Council took into account the current 5 year housing land supply situation in South Wiltshire, and the requirement to balance the benefits of the proposal against the adverse impacts as required under Paragraph 11 of the Framework.
 11. Accordingly, I find that the Council was entitled to refuse the application and defend the appeal and has not acted unreasonably in so doing.

Conclusion

12. 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.

S Leonard

INSPECTOR