
Costs Decision

Site visit made on 21 January 2020

by R Norman BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2020

Costs application in relation to Appeal Ref: APP/M1005/W/19/3238780 Land to the rear of 30 Avenue Road, Duffield, Derbyshire DE56 4DW

- 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 Bullock and Ms M White for a full award of costs against Amber Valley Borough Council.
 - The appeal was against the refusal of planning permission for a new house in land to the rear of 30 Avenue Road, Duffield.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The Appellants' application for costs relies to a substantial extent on the matter of whether the pre-application advice given by the Council was misleading in relation to the subsequent reasons for refusal.
4. Informal advice given before an application is made is given without prejudice and cannot pre-determine the outcome of a subsequent application which must take account of all material factors at the time the application is being considered. I note that such a caveat is included in the written response.
5. I have carefully considered the Council's costs response, nevertheless, based on the information before me, which includes a copy of the pre-application advice, it appears to me that this was, to some extent, misleading. The issue of the forward position of the proposed dwelling does not appear to have been highlighted, and indeed the section of the advice titled 'Visual Amenity' appears generally supportive of the proposed layout in relation to the pattern of development in the surrounding area.
6. In relation to the amenity issues, I note that the advice given highlights some concerns over the separation distances between the properties and the potential for overlooking from No 30. However, the advice then goes on to say that potentially a two-storey property would be more suitable and gives suggestions as to the windows and rooms to the rear of the property.

7. I note that the advice concludes that a much smaller property may be able to be accommodated on the site and that the advice was not favourable overall. However, based on the comments highlighted within the preceding sections, it would not have been unreasonable for the Appellants to have proceeded with an application for a two-storey dwelling.
8. I therefore find that, whilst pre-application advice does not guarantee a favourable outcome, the Appellant amended the scheme in light of the advice given, and subsequently the application was refused on a matter which they were advised could potentially be addressed and a matter which was not raised as an issue in any event. For that reason, I find the pre-application advice to have been misleading in this instance.
9. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

10. 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 Amber Valley Borough Council shall pay to Mr C Bullock and Ms M White, 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.
11. The applicant is now invited to submit to Amber Valley Borough 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.

R Norman

INSPECTOR