
Costs Decision

Site visit made on 30 January 2020

by R Morgan MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 March 2020

**Costs application in relation to Appeal Ref: APP/F1040/W/19/3240900
St Brides Barn, Shepherds Lane, Stanton by Bridge, Nr Swadlincote,
Derbyshire D73 7NF**

- 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 Andrew Moseley for a full award of costs against South Derbyshire District Council.
 - The appeal was against the refusal of planning permission for the conversion of the existing timber frame barn to a dwelling without complying with conditions attached to planning permission Ref 9/2018/0887, dated 7 November 2018.
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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, 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. Paragraph 047 of the Guidance lists examples of unreasonable behaviour by local planning authorities in relation to procedural matters at the appeal, which include a lack of cooperation with the other party.
4. In the applicant's view, greater cooperation and dialogue during the application process could have resulted in a better understanding of the scheme, enabling a number of the reasons for refusal to be resolved. Whilst I appreciate that this must have caused the applicant some frustration, the evidence before me suggests that the Council understood the scheme and made an appropriate analysis of the submitted plans. Advice had been provided at earlier stages, and although there may have been changes in approach, the Council was not bound by any informal advice it had previously given.
5. The applicant has highlighted the Council's failure to determine the application within the time limits without providing a reasonable explanation as to why. However this did not in itself result in an appeal, nor did it lead to additional cost during the appeal process.
6. Paragraph 049 of the Guidance gives examples of types of behaviour which may give rise to a substantive award of costs against a local planning authority. In this regard, the appellant contends that the Council has acted unreasonably in a number of ways, including preventing or delaying

development which, having regard to the development plan, should have been permitted, and making vague, generalised or inaccurate assertions about the proposal's impact.

7. In my decision notice I concluded that the proposed amendments to the scheme would not conflict with Policy H28. However, whilst I came to a different decision to the Council, this was a matter of planning judgement. It is clear from the officer's report that the Council's decision was based on a detailed analysis of the case and I found there to be adequate explanation to justify its decision.
8. It is suggested that the Council could have dealt with certain matters by condition rather than refusal. However the Council had already imposed the conditions which it considered were necessary to make the scheme acceptable and were not obliged to make further changes to those conditions, or impose additional conditions. This was particularly the case as, in the Council's view, the amendments proposed were not acceptable.
9. The applicant contends that the Council has acted unreasonably by failing to implement Policy H28 in a way that is consistent, having regard to other examples nearby. However, the Council must make its decisions based on the merits of the particular case and the examples of nearby developments provided were not directly comparable to the appeal proposal.
10. In the applicant's view the Council imposed a condition which does not meet the guidance set out in the National Planning Policy Framework, but I have found that condition 6 is reasonable and necessary, and therefore the Council did not act unreasonably by imposing it.
11. I note the applicant's comments that a more helpful approach at the pre-application stage could have resulted in the appeal being avoided or narrowed in scope. However given the issues raised and the Council's response, it seems very unlikely that an appeal would have been avoided altogether. Furthermore, I am not convinced that further dialogue would have resulted in any significant resolution or narrowing of any of the issues.
12. I conclude that unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, an award of costs is not justified and the application for costs is refused.

R Morgan

INSPECTOR