
Costs Decision

Site visit made on 10 March 2020

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 24 March 2020

Costs application in relation to Appeal Ref: APP/L1765/W/19/3242592 22 Hampton Lane, Winchester SO22 5LF

- 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 Philip & Mrs Aggy Russell for a full award of costs against Winchester City Council.
 - The appeal was against the refusal of planning permission for the demolition of existing single dwelling being replaced by erection of a single dwelling.
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Decision

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

Procedural Matter

2. The costs application submitted by the Applicants does not expressly state whether a full or partial award of costs is sought. However, by reason of the information contained within the costs application, I have interpreted the application as being as an application for a full award of costs, and I have considered the costs application on that basis.

Reasons

3. Planning Practice Guidance (the PPG) 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. Parties in planning appeals and other planning proceedings normally meet their own expenses.
4. Unreasonable behaviour can relate to procedural matters - the appeal process - or substantive matters - issues related to the planning merits of the appeal. The PPG provides a list of examples of behaviour by Local Planning Authorities that may be deemed to be unreasonable in respect of procedural matters; the list includes examples such as: lack of cooperation with the other party or parties, delay in providing information, only supplying information at appeal when it was previously requested, and not provided, at application stage.
5. The Applicants have put it to me that, during the appeal, new plans (the Amended Plans) which would have modified the original submitted scheme were introduced with the intention and belief that the amended scheme would overcome the concerns of the Council and its reason for refusal. The Council rejected the Amended Plans citing the principles established in *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]. This point appears to have been accepted by the Applicants, who then submitted a further new planning

- application¹ which was accompanied by the Amended Plans as a separate application.
6. The Applicant contends that the Council has acted unreasonably by delaying consideration of the Amended Plans and thereby prevented the appointed Inspector from considering the Amended Plans as part of the relevant appeal.
 7. However, it will be seen from my decision on the main issue in the appeal, that I have, as part of the appeal, considered the Amended Plans and have concluded that the modifications made to the proposal as originally submitted to the Council, would result in a scheme which would be materially different to that as originally submitted and upon which consultation with relevant parties was carried out. Consequently, the actions of the Council have not resulted in my being unable to consider the Amended Plans in relation to the appeal.
 8. As noted above, the evidence before me indicates that the Applicants accepted the position with regards to the Amended Plans and, accordingly, submitted a new application. Consequently, the new, revised and materially different scheme would be considered as part of that new application. However, the Applicants chose to continue with the appeal seeking to introduce the Amended Plans in the belief that these could be accepted under the Wheatcroft principles. As will be seen from my decision, I have concluded that the amended plans would represent a new scheme upon which relevant parties would need to be consulted.
 9. Annexe M of the Planning Appeals Procedural Guide makes it clear that “if an appeal is made the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people’s views were sought”. In this instance, to accept the Amended Plans without providing the relevant interested parties with the opportunity to comment, would lead to possible prejudice to other interested people.
 10. In light of the above, I conclude that the Council has not acted unreasonably in relation to the Applicants’ submission of the Amended Plans. It, therefore, cannot be said that the Applicants have been put to any unnecessary or wasted expense by the Council in relation to the appeal.
 11. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated. The application for a full award of costs is, therefore, refused.

A Spencer-Peet

INSPECTOR

¹ Local Planning Authority Reference: 19/02678/FUL