
Costs Decision

Site visit made on 3 February 2020

by Adrian Hunter BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th May 2020

Costs application in relation to Appeal Ref: APP/F0114/W/19/3240981 25 Upper East Hayes, Walcot, Bath BA1 6LP

- 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 Rathbourne Ltd for a full award of costs against Bath & North East Somerset Council.
 - The appeal was against the refusal of planning permission for demolition of existing dwelling and erection of 2 No. dwellings, new vehicular and pedestrian access, landscaping and associated works.
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Decision

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

Reasons

2. The National Planning Practice Guidance (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 or wasted expense in the appeal process.
3. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The appellant's application for costs relates to an inconsistent approach to advice and decision making by the Council. Furthermore, the Council has failed to demonstrate the harm caused by the development to the Conservation Area. This unreasonable behaviour has led to the appellant to incur unnecessary costs and delay.
5. Informal advice provided 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 relevant factors. I note that the original pre-application advice submitted by the appellant was for the development of a row of 5 terraced dwellings. In responding to this, officers raised concerns with regards to the scale of the development and its impact on the Conservation Area. It was advised that the scheme be reduced to three terraced dwellings, but further caveated that this would need to be assessed on its own merits. I have no evidence that any further pre-application advice was sought for a reduced scheme prior to the submission of the appeal application. It would appear that the appellant took the view that 2 dwellings would therefore be acceptable on the site and submitted the appeal application. I have therefore

no firm basis to conclude that the informal advice was so misleading as to amount to unreasonable behaviour on the part of the Council.

6. In relation to the impact of the development upon the Conservation Area, I note the contents of the officer's delegated report in relation to the harm the proposal would cause to the Conservation Area. I also note the objections raised by the Council's Heritage Officer. Whilst no additional appeal statement was provided by the Council to further explain their case in relation to the harm, I find that the relevant sections of the delegated report and the reasons contained within the Council's decision notice, provide sufficient justification and explanation of the impact of the proposal upon the Conservation Area. It therefore follows that I am satisfied that the Council has shown that it was able to substantiate its reason for refusal.
7. The appellant has also expressed concerns regarding a lack of consistency with regards to advice in relation to highway matters. Whilst I recognise the concern and uncertainty of having highway officers change throughout the course of the appeal application, I find nothing to suggest that a decision was not reached on the basis of the merits of the proposal, as submitted by the appellant. Furthermore, whilst I have come to a different view, I find that evidence was put forward by the Council to substantiate their position in relation to highways matters.
8. With regards to the issue around the Construction Management Plan (CMP), it will be noted from my decision on the appeal application, that I consider this could and should have adequately been dealt with via a planning condition. That said however, I do not feel it unreasonable for the relevant officers of the Council to raise concerns regarding the submitted draft CMP, where these are relevant to the consideration of the appeal application. On this basis, I do not find any evidence of unreasonable behaviour on the part of the Council in relation to highway matters.
9. As a result, it follows that I cannot agree that the Council has acted unreasonably in this case. As such there can be no question that the Applicant was put to unnecessary or wasted expense.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

Adrian Hunter

INSPECTOR