



Costs Decision

Site visit made on 2 June 2020

by Janet Wilson BA (Hons) BTP MRTPI DMS

An Inspector appointed by the Secretary of State

Decision date: 10th June 2020

Costs application in relation to Appeal Ref: APP/F0114/W/19/3243930 The Cottage, Northfields, Lansdown, Bath BA1 5TN

- 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 John Baxter for a full award of costs against Bath & North East Somerset Council.
 - The appeal was against the refusal of planning permission for the Demolition of the existing dwellings (comprising The Cottage and The Annex) and the erection of 3 detached dwellings.
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Decision

1. The application for costs is refused.

The submission for Mr John Baxter

2. The application is for a full award of costs and was made in writing within the prescribed period.
3. The applicant contends that the Council has behaved unreasonably by: a) 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; b) by making vague generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis; c) by refusing planning permission on a planning ground capable of being dealt with by condition. In doing so the applicant argues he was put to an unnecessary appeal and has therefore incurred wasted expense.
4. It is argued that the minutes of the Committee meeting demonstrate that the three reasons for refusal are based upon vague, generalised and inaccurate assertions about the impact the development would have. Two dwellings already exist and the addition of a third can be created by implementing a partly implemented scheme therefore no overdevelopment is involved.
5. The applicant asserts that the section drawings show the buildings would be taller and that Members did not seek to understand the character of the area and did not present evidence to counter that of the built environment professionals nor did they substantiate why the design would harm the character and appearance of the Conservation Area. As such the Council's evidence was vague and generalised assertions with no technical evidence to support it.

6. The applicant also argues that the minutes of the planning committee were not specific in relation to the impact which the development had upon the neighbouring property in respect of the loss of light. The applicant argues that the detail was not explained, and the level of harm not quantified. The officer report had concluded that the development would not cause undue harm and members failed to explain or justify the decision they reached. Moreover, the effect of the removal of tree cover which would have represented a benefit was not referenced.
7. The applicant states no evidence to demonstrate that the proposal would not have a harmful effect on wildlife. Ecological reports were produced to address the presence of bats within the cottage and that Habitats Regulations tests could be satisfied. The fact that vegetative boundaries would be retained and strengthened with further planting coupled with the existing gardens lacking any important flora. The Committee members failed to explain which species of wildlife would be harmed and failed to identify areas of greenspace which were of value and how they would be harmed.
8. The applicant states that Councillors also failed to take into account the conditions which had been proposed which would have secured a wildlife friendly scheme and compliance with bat mitigation which it is argued further demonstrates the unreasonable behaviour of the Council and which contradicts the advice in the Planning Practice Guidance (PPG).

The response of Bath and North East Somerset Council

9. The Council refutes the Costs claim stating that Members benefited from an officer presentation which included photographs to illustrate the context of the site. Ward Members spoke in detail, outlining the character of the area and referring to matters such as building form, density, grain, materials, and landscaping. On this basis Members understood the character of the area with the speech of the ward member clearly explaining how the development would conflict with the character of the area. These matters were also expanded on in the Council's statement.
10. With regard to the effect on the neighbouring property, Members had the benefit of an officer presentation which included photographs from No.7 Northfields. The Ward Member had visited the site with the Case Officer and articulated the harm in relation to the neighbouring property. Third parties also spoke at the Planning Committee and expressed how they considered harm would be caused to their residential amenity.
11. The Council argue that there is no obligation for Councillors to demonstrate the quantum of harm, but they did need to be confident that the level of harm was significant. It is the Council's view that this was clearly explained and is reflected in the refusal reason which is a concise summary of the concerns referencing the conflicts with the Development Plan.
12. The Council acknowledge that their ecologist raised no objection subject to conditions. Members through their assessment were not confident that there was sufficient room for replanting as they considered the proposals represented an overdevelopment of the site. Members were not making a judgment on the impact upon any protected species, but focussed on the loss of Green Infrastructure, and the role that this plays in relation to biodiversity. Members were shown existing and proposed site plans, photographs of the garden area

and made an informed judgment. The Local Ward Member and third parties referenced the loss of connecting green corridors for wildlife movement, and this local knowledge informed the debate at the committee and the decision. Whilst officers advised that the outstanding concern could be secured via condition, Members were concerned that the development did not include enough green space, and the loss of the trees which were of wildlife value could not be compensated for by sufficiently meaningful replacement planting. Members had a copy of suggested conditions and it was not considered that these would overcome the harm identified by Members. Reason 3 is a concise summary of the concerns referencing the conflicts with the Development Plan. This matter is also expanded upon in the Council's Statement.

Reasons

13. The PPG advises that irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary expense in the appeal process. It is an accepted principle that parties in planning appeals normally meet their own expenses.
14. The PPG states that the aim of the costs regime, amongst other things, is to: encourage parties to behave in a reasonable way following good practice in the presentation of full and detailed evidence to support their case; encourage Councils to properly exercise their development management responsibilities, relying only on reasons for refusal which stand up to scrutiny and not to add to development costs through avoidable delay
15. It is a fundamental principle that members are at liberty to disagree with the professional advice they receive. There are naturally subjective aspects to the assessment of the impact of a development on the character of an area, the effect on the neighbour and in relation to the loss of vegetation. Whilst the Council Officer's report was favourable the Council was not bound to reach the same conclusion.
16. Whilst not all members who spoke in the debate were part of the committee, they had an entitlement to participate in the process. Overdevelopment is not just a numerical exercise as implied by the applicant, the extent of built form and coverage on the site together with the bulk of the buildings are material factors and the Council were entitled to take a different view to their advisors
17. In this case the decision notice gave clear and succinct reasons for the decision which are expanded upon in the Council's detailed appeal statement. Such reasoning is essentially a matter of planning judgement. The applicant clearly disagrees with the Council's assessment of the planning merits. Whilst the Council's case was not entirely well-expressed in some areas, I too have found the development to be unacceptable, I ultimately agreed with the Council's decision and rationale for the reasons given within the main appeal decision, which was supported by the development plan, national policy and taking account of material considerations.
18. Consequently, I find that the Council did not unreasonably prevent or delay development which ought to have been permitted. The PPG makes it clear that any application for costs needs to clearly demonstrate the basis for alleged unreasonable behaviour and how this resulted in unnecessary or wasted expense in the appeal process. I have not found that unreasonable behaviour

occurred, and it is not therefore necessary for me to consider the matter of unnecessary or wasted expense in pursuing the appeal.

19. I note that the applicant draws my attention to the word unreasonable quoting the ordinary meaning as established in *Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774*, and not in the stricter public law definition of 'Wednesbury' unreasonable. I have had regard to this, but it does not alter my finding in relation to the planning merits of the case nor my findings in relation to this cost's decision.

Conclusion

20. In the light of the above findings I have concluded that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and therefore an award of costs has not been justified.

Janet Wilson

INSPECTOR