



Costs Decision

Site visit made on 27 May 2020

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th June 2020

Costs application in relation to Appeal Ref: APP/H1840/W/20/3245900 Casa Mia, Three Cocks Lane, Offenham, Evesham WR11 8RY

- 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 David Morgan for a full award of costs against Wychavon District Council.
 - The appeal was against the refusal of planning permission for demolition of existing garage, construction of 2 bungalows and garages to the rear of Casa Mia and construction of replacement garage to serve Casa Mia.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may 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. It goes on to explain that local planning authorities are at risk of an award of costs if they behave unreasonably with regard to procedural matters or to the substance of the matter under appeal. An example given of unreasonable behaviour is refusing to provide requested information when a more helpful approach would probably have resulted in either the appeal being avoided altogether or narrowing of the issues to be considered. Another example is refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead.
4. The applicant argues that the Council acted unreasonably by failing to act in a positive and proactive manner in seeking to solve solutions to any problems associated with the development and that two of the three reasons for refusal could have been addressed by suitable planning conditions. In response to the Council's rebuttal, they have also argued that they have misunderstood and failed to take proper account of a fallback position as an important material consideration.
5. The applicant has pointed to a number of examples of where the Council are alleged to have failed to communicate about issues relating to the development. They claim that the decision notice was the first communication they had received despite several attempts. Correspondence from the Council

- to the applicant following their decision includes an apology over the lack of communication.
6. The Council argue that they had fundamental concerns about the proposal which would not have been altered by engaging in any discussions or negotiations about the proposal. The evidence before me appears to confirm this position. It is highly unlikely that greater levels of communication would have resolved issues relating to the location of development or the Council's concerns over character and appearance. Similarly, conditions are unlikely to have been able to address the first and second reasons for refusal. Therefore, while it is clear that the Council could have done more to communicate with the appellant, it is unlikely it would have altered the overall decision. The appeal would still have been unnecessary.
 7. In addition, the weight the Council gave to the conflict with policy, and its consideration of harm to character and appearance in particular, are matters of planning judgement. The fact the applicant disagrees with the Council on these matters is not evidence of unreasonable behaviour. I am also satisfied that the Council sought to substantiate their reasons for refusal.
 8. The evidence does however suggest that further discussion and/or the use of conditions may have resulted in the third reason for refusal being resolved. The Council have acknowledged that their concerns over biodiversity could potentially have been addressed by negotiation or condition. However, it remains clear that while this may have narrowed the scope of the appeal, it would not have allowed the development to proceed.
 9. The Council's officer report does not go into any detail about the previous permissions on the site. The legal status of those permissions is outside the scope of the appeal and this decision. However, from the Council's appeal statement it remains clear that whether or not the permissions are extant, it would not have altered their position. Again, the weight the Council gave to this issue is a matter of judgement. There is no evidence of unreasonable behaviour with regard to this issue.
 10. For an award of costs to be granted, there must both be evidence of unreasonable behaviour *and* wasted or unnecessary expense. In this case, the costs associated with the appeal would have still been necessary. I acknowledge that it may have been possible to narrow the scope of the appeal in terms of biodiversity. However, the applicant has not needed to prepare any specific or detailed new evidence in relation to this issue for the appeal. The rebuttal of the Council's case is addressed in a few paragraphs and would not have required significant amounts of work or expense.
 11. The appellant has suggested that costs should be awarded in relation to information prepared for a second application. However, the PPG is clear that costs can only be awarded in relation to the appeal or events before the appeal only. This does not extend to costs associated with separate applications.
 12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

S J Lee

INSPECTOR