



Costs Decision

Site visit made on 29 June 2020

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 21st July 2020

Costs application in relation to Appeal Ref: APP/H0928/W/20/3246821 Garden ground east of Littlethwaite, Catterlen, Penrith CA11 0BQ

- 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 and Mrs A Bircher for a full award of costs against Eden District Council.
 - The appeal was against the refusal of planning permission for erection of a self-build/custom-build dwelling with all matters reserved.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. The Planning Practice 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 or wasted expense in the appeal process. The application for costs should clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. The applicants consider that the Council behaved unreasonably by introducing a new reason for refusal and thereby prolonging proceedings, by relying on information that is manifestly inaccurate and untrue, and by not engaging adequately with the National Planning Policy Framework (the Framework) contrary to established case law.
4. The reasons for refusal relate to conflict with the Council's housing policies. In its evidence to the appeal, the Council has discussed the impact of the proposal on the character and appearance of the area. However, it has not introduced any additional reasons for refusal or concluded against any additional policies. As can be seen from my appeal decision, the character and appearance of the appeal site and the settlement is relevant to the consideration of whether or not the proposal would meet the criteria relating to infill sites and rounding off settlements. In any case, it has not been demonstrated how the Council's evidence to the appeal prolonged the appeal process.
5. Concerns have been raised in respect of the data the Council relied upon as evidence that it is meeting its legal duty in relation to permissions for self-build and custom-built dwellings. While appeal decisions relating to different schemes may reach different conclusions in respect of the adequacy of evidence, I am not aware that there is any agreed standard methodology. Each case must be considered on its own individual merits. As can be seen from my

appeal decision, taking account of the particular merits of the case, and in the absence of evidence to the contrary, I did not find that the Council was failing to discharge the relevant duty.

6. In determining the application, the Council did not specifically refer to Paragraph 11d) of the Framework. However, it did assess the scheme against relevant development plan policies and it did consider whether there were any material considerations that would outweigh the conflict with the development plan. While the applicants disagree in relation to the weight to be afforded to the benefits of the scheme, and therefore with the Council's conclusion, the Council exercised its planning judgement in reaching its decision. As can be seen from my appeal decision, I concurred with the Council's assessment and have dismissed the appeal accordingly.
7. I appreciate that the Council's decision will have been a disappointment to the applicants and that costs have been incurred in pursuing the appeal. However, the applicants exercised their right of appeal and the parties are expected to meet their own costs in the appeal process. The Council did not behave unreasonably in refusing to grant planning permission on the grounds of conflict with the development plan. It therefore follows that the Council did not delay development that should clearly have been permitted and planning permission was not unjustifiably withheld.

Conclusion

8. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. A full award of costs is not justified.

Sarah Manchester

INSPECTOR