
Costs Decision

Site visit made on 18 August 2020

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st September 2020

Costs application in relation to Appeal Ref: APP/Y3940/W/20/3250940 Land at Lydiard Green, Lydiard Millicent SN5 3LP

- 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 George Gordon of Lydiard Green Limited for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for erection of three dwellings.
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Decision

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

Reasons

2. 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. The PPG provides a number of potential examples of unreasonable behaviour by local planning authorities including failure to produce evidence to substantiate each reason for refusal on appeal, among other things.
3. The applicant contends that the Council failed to substantiate matters relating to case law, planning history and how the development was considered in light of the development plan's spatial strategy or highways related matters. They further contend that the Council failed to act cooperatively on matters of design, did not use planning conditions effectively, introduced neighbourhood plan policies late and unexpectedly, and failed to take proper account of the National Planning Policy Framework (the Framework) Paragraph 11(d) balance.
4. Case law and planning history were not substantiated under the appeal by way of lawful development certificate, and therefore such fallback arguments carried limited weight. Consequently, the lawfulness of the Class Q works is still a matter for dispute between the parties and in the absence of such evidence it is not obvious to me that the Council acted unreasonably in determining the application as they did.
5. It is clear that the Council did not engage on matters of design because the intent of the application was to regularise what was already built and not to evolve the design. Under the appeal, the applicant relied on Paragraph 109 of the Framework in arguing against the Council's reasons for refusal on highways matters. The applicant did not demonstrate that the development plan was not consistent with the Framework and that Paragraph 109 should carry more weight.

6. The Council decided the application in accordance with the development plan and it was not made sufficiently clear that Paragraph 109 of the Framework should be taken as a material consideration that indicated otherwise. I found that the development conflicted with Paragraph 109 in any event.
7. The Council's actions in bringing the emerging neighbourhood plan to my attention as part of the appeal was the correct thing to do and in accordance with Coronavirus (Covid-19): planning update published by MHCLG on 13th May 2020, and pursuant to the principle that planning decisions should be made based on the evidence available at the time of the decision, not at the time of the application.
8. It appears housing land supply figures changed over the course of proceedings, between application and appeal, so it appears the Council acted properly and responded according to the situation at the time of the application. In any event, I concluded under the appeal that even if there was a substantial shortfall, the limited scale of the development meant that any benefits would be limited, and significantly and demonstrably outweighed by the adverse effects identified, in accordance with the Framework.
9. The site is in an open countryside location and the development is fundamentally inappropriate and conflicts with the development plan's spatial strategy. A planning condition securing landscaping detail would not have overcome this fact or changed the outcome of the decision. A highways condition was suggested at appeal, and therefore it is not clear how this could be a catalyst for the appeal or associated costs therein.
10. The applicant has not provided substantive evidence demonstrating that the Council were uncooperative, by way of email chain or otherwise and therefore I cannot make a definitive conclusion on this claim.
11. Overall, the applicant has failed to demonstrate that the Council behaved unreasonably and that this led them to incur unnecessary costs under the appeal.

Conclusion

12. For the reasons given, the application for an award of costs is therefore refused.

Liam Page

INSPECTOR