



Costs Decision

Site visit made on 8 September 2020 by L Wilson BA (Hons) MA MRTPI

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 October 2020

Costs application in relation to Appeal Ref: APP/B3030/W/20/3254592 3 Pitomy Drive, Collingham, Nottinghamshire NG23 7QS

- 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 Martin Bindemann for a partial award of costs against Newark Sherwood District Council.
 - The appeal was against the refusal of planning permission for the change of use of land to extend the residential curtilage, erection of timber decking and partial replacement of boundary fence with picket handrail.
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Decision

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

Reasons

2. The application for an award of costs and the Council's response were submitted in writing and the content will be familiar to both parties. Consequently, I shall not repeat those submissions in full within this decision. Government guidance on the award of costs is set out in the Planning Practice Guidance (PPG). Paragraph 030 of that guidance notes that a party may have costs awarded against them in relation to appeal proceedings if they have behaved unreasonably and that behaviour has led another party to incur unnecessary expense. Those two matters are pre-requisites for an award; if there has been no unreasonable behaviour or no wasted expense an award will not be justified.
3. The applicant seeks a partial award of costs on the basis that the unreasonable actions of the Council has resulted in an unnecessary appeal which has directly led to expenditure. The impact of this unnecessary expenditure at this exceptional time has heightened the impact upon the applicant.
4. The applicant contends that the Council acted unreasonably as they failed to request information on ecology which then formed a reason for refusal. They also consider that the Council has prevented and delayed development which clearly should have been permitted. They assert that the first reason for refusal is factually incorrect because the site is not located within the countryside and the Council has failed to take into account relevant planning history and local planning policy in this regard.
5. I understand that the Council asked the applicant's agent to take photographs as the case officer was unable to undertake a site visit due to COVID-19 restrictions. The applicant's new agent emphasises that the photographs did

not consider views and vistas from the public realm which was a critical element of the scheme.

6. The Council claims that they have not behaved unreasonably in refusing planning permission. They accept that they did not request an ecology survey as the principle of development was unacceptable and this was not the sole reason for refusal. In their view, this was in the applicant's interest, so they were not given any false sense of hope and potentially incurring unnecessary time or expense.
7. In terms of the photographs submitted and inability to undertake a site visit the Council emphasise that they requested multiple photos from various viewpoints in order to make an assessment in the interests of dealing with the application promptly. They also highlight that the relative visibility of a site from the public realm is not a determining factor when assessing harm on both a Conservation Area or wider landscape. In addition, the Council confirms that they viewed the application site from the surrounding footpaths as they are local to the area, and this was explained to the applicant.
8. Although the ecology reason for refusal would have been a surprise to the applicant, there were two other main issues. Even if the survey had been requested at application stage, the scheme would still have been refused, due to the two other reasons for refusal. There is no evidence to demonstrate that earlier dialogue, regarding the impact upon local biodiversity or protected species, would have resulted in a different outcome.
9. The assessment of whether the development constitutes encroachment into the countryside, and its impact upon the area, requires an exercise of planning judgement. The Delegated Report and reasons for refusal were clear and sufficient evidence was submitted to support the Council's policy stance. The reasons for refusal were not unreasonable. It is also clear that the submission of alternative photographs would not have resulted in a different decision.
10. The applicant has not shown that the Council's refusal of planning permission was unreasonable. In the absence of any unreasonable behaviour there are no grounds for an award of costs and a full or partial award is unjustified.

L M Wilson

APPEALS PLANNING OFFICER

Inspector's Decision

11. I have considered all the submitted evidence and the Appeal Planning Officer's report, for all the above reasons, I concur that this application should be refused.

Chris Preston

INSPECTOR