The Planning Inspectorate

Costs Decision

Site visit made on 14 October 2020

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 21 October 2020

Appeal Ref: APP/Q3305/W/20/3251805
The Mermaid Inn, 1-2 Tucker Street, Wells BA5 2DZ

- 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 Sam James for a full award of costs against Mendip District Council.
- The appeal was against a refusal of the local planning authority to grant planning permission for development described as erection of 4no 2 bedroom duplex dwellings.

Decisions

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

Procedural Matters

2. Following the initial application for costs, the applicant submitted 2 revised versions. For avoidance of doubt, this decision is based on revision 1.2 of the costs application.

Reasons

3. The Planning Practice Guidance 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.

4. The applicant claims that the Council acted unreasonably on grounds which are stated as:

   (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; and

   (b) by making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

5. With regard to Ground (a), the Council refused planning permission partly on the basis that mitigation would require 'permanent closure of windows and rooflights'. However, this was incorrect given that no requirement permanent closure of the windows and rooflights had been identified, and nor was this proposed. This was unreasonable.

6. The Council additionally refused planning permission on the basis that 'existing' sources of noise could not be mitigated. This was a reference to the fact that activities at the adjacent pub lie outside the scope of control. This was of relevance given that the appellant's noise report makes a number of

assumptions with regard to a boundary wall and activities at the pub, alongside some additional recommendations.

7. In this context the applicant has placed particular weight on the comments of the Council's Environmental Protection Officer (EPO). These both endorse the measures outlined in the noise report, whilst also cross referencing the case officer's view that permanent closure of the windows would be unacceptable. There is an obvious and unresolved contradiction within this comment, further compounded by summary responses which include both 'no object' and 'object'.

8. Despite the above confusion however, the EPO's comment is not at odds with the Council's stance in relation to existing sources of noise. This is because the EPO endorses the measures outlined in the noise report on the basis that 'all measures identified within the report are implemented'. As noted above, off-site measures lie outside the scope of control, and thus all measures could not be implemented. Acting on professional advice, the Council therefore had legitimate grounds to refuse planning permission.

9. Notwithstanding the fact that the reason for refusal contained an unreasonable error, or the fact that I took a different view to the Council in relation to noise within my main Decision, the Council did not therefore prevent or delay development which should clearly be permitted. For these reasons Ground (a) fails.

10. With regard to Ground (b), the applicant states that the Council has a prejudice against mechanical ventilation heat recovery (MVHR), and that this, rather than any objective analysis, formed the basis of the Council's refusal of planning permission. However, I have been provided with no evidence of the existence of such prejudice. Moreover, in view of my reasons above, the Council's reason for refusal was at least in partly based on the legitimate concern that off-site mitigation could not be secured. For these reasons Ground (b) fails.

Conclusion

11. For the reasons set out above I conclude that the applicant's claim for an award of costs should be dismissed.

Benjamin Webb

INSPECTOR