



Costs Decision

Site visit made on 5 October 2020

by Andrew Bremford BSc (Hons) MRICS

an Inspector appointed by the Secretary of State

Decision date: 23 October 2020

Costs application in relation to Appeal Ref: APP/L1765/W/20/3255795 Brown Eaves, 170 Main Road, Colden Common SO21 1TJ

- 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 Jane Ratcliffe for a full award of costs against Winchester City Council.
 - The appeal was against the refusal of planning permission for retention of existing outbuilding in incidental use to the main dwellinghouse following internal and external alterations without complying with a condition attached to planning permission Ref 19/01049/HOU, dated 15 August 2019.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance¹ (PPG) 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 expense in the appeal process.
3. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The application for a full award of costs was made in writing. The applicant submits that the Council has acted unreasonably by refusing planning permission that should clearly be permitted having regard to the development plan and any other material considerations and not produced evidence to justify its reason for refusal. The Council's response was made in writing confirming the principle challenge.
5. The planning application which is the subject of the appeal was considered by the Council's Planning Committee on 23 June 2020. The recommendation of the Council's planning officers was to grant planning permission subject to a variation of condition 1 to restrict the use of the outbuilding for ancillary purposes only.
6. While the Council is not duty bound to follow the advice of its professional planning officers, if a different decision is reached the Council must clearly

¹ <https://www.gov.uk/guidance/appeals>

demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. In this case, the Council's planning officer concluded that the use of the building for ancillary purposes to provide accommodation for family members, as specified, or even guest accommodation, would not be contrary to adopted policies. Furthermore, favourable consideration was given to the outbuilding being well-related to the main house; there being no sub-division of the garden to provide it with its own curtilage; and there being no vehicular and pedestrian access to the outbuilding other than via the only access to the main house.

7. The Council's case rests on its contention that the application was given all due and proper consideration by members of the Planning Committee, who were given a report containing reference to material planning matters for members to scrutinise prior to making their decision to refuse planning permission. However, I have seen no substantive evidence to reasonably justify a conclusion that the proposal is tantamount to the creation of a new dwelling in the countryside and how it is contrary to the policy referred to by the Council in its decision notice. Moreover, how the proposal would result in accommodation that would be occupied separately from Brown Eaves. I acknowledge from the Planning Committee minutes that debate about the case took place, however there are no details of a clear and objective analysis that led to the Council's reason for refusal of the planning application.
8. In the planning judgement, it appears to me that having regard to the provisions of the development plan and other material considerations, the proposal should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal.

Conclusion

9. I therefore find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

Costs Order

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Winchester City Council shall pay to Jane Ratcliffe, the costs of the appeal proceedings described in the heading of this decision.
11. The applicant is now invited to submit to Winchester City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Andrew Bremford

INSPECTOR