
Costs Decision

Site visit made on 15 September 2020

by J Gibson BUEP MPIA

an Inspector appointed by the Secretary of State

Decision date: 28 October 2020

Costs application in relation to Appeal Ref: APP/C1625/W/20/3255768 The Old Kings Head, Nibley Green, North Nibley, Dursley GL11 6AZ

- 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 John Hall for a full award of costs against Stroud District Council.
 - The appeal was against the refusal of planning permission for the "demolition of outbuilding and construction of extension to be used as a workshop".
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Decision

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

Procedural Matter

2. The above description of development has been taken from the submitted application form. In addition to the described works the proposed plans of development show that the proposal also includes the construction of a partially enclosed carport, with loft storage space, attached to the workshop. I have proceeded to determine the costs application on this basis.

Reasons

3. Paragraph 030 of the Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour in this context may be procedural, relating to the appeal process, or substantive, relating to issues arising from the merits of the appeal.
4. The applicant's case stems from the favourable pre-application advice obtained from the Council. The applicant contends that the subsequent determination of the Council, contrary to that pre-application advice, and conduct during the application process represents unreasonable behaviour. They also dispute the relevance of the Council's second reason for refusal which concludes that the applicant did not sufficiently address the possible ecological impacts of the proposed development, suggesting the matter could have appropriately been conditioned.
5. The pre-application advice has been submitted for consideration but has not been accompanied with the relevant proposed plans and documentation which informed this advice. As such, I am unable to verify whether there are any differences with the appeal proposal. Nevertheless, the pre-application advice

is clearly caveated as being the opinion of that officer, based on the information presented and did not represent a formal decision on the matter. As such, whilst regrettable, the pre-application advice does not prejudice the assessment carried out by the Council and their ultimate decision to refuse the application.

6. The applicant's disappointment on this subject is understandable. However, the consideration of such character and appearance matters are the subject of planning judgement. As such, whilst there has not been any identified change in policy or interpretation of them by either party, the Council were entitled to reach an alternative conclusion to the initial pre-application advice having subsequently carried out a full assessment of the complete planning application. I note also the applicant's concerns over the existing dwelling being treated as a non-designated heritage asset for assessment purposes during the application process. However, the available evidence does not suggest that the Council ultimately deemed the existing dwelling to be a non-designated heritage asset in concluding their assessment. The reasons for refusal and subsequent statements of case clearly detail the Council's identified policy conflicts and material considerations for reaching their decision on the application.
7. Importantly, the Council's officer proceeded to liaise with the applicant to communicate their position on the application and offered them an opportunity to submit a revised scheme, along with other options. This, in my view, represents a positive and proactive response to these circumstances. Furthermore, whilst the Council should have finalised their decision within the statutory timeframes, the applicant should have equally informed the Council within this timeframe of their decision for the application to be determined as proposed, with no amendments, given the constructive dialogue between the parties up until that point. I am therefore satisfied that the Council has not behaved unreasonably in this regard.
8. With respect to the applicant's contentions on the second reason for refusal, it is considered that the countryside location of the appeal site, the dilapidated condition of the existing side extension and the proposal to demolish it should have prompted the applicant to carry out appropriate ecological surveys and impact assessments prior to the application being submitted. Policy ES6 of the Stroud District Local Plan (LP) (adopted November 2015) was identified as a key policy for consideration in the obtained pre-application advice. This policy sets out the statutory importance of protected and priority species and emphasises the need to demonstrate that proposed development would not have an adverse effect on them or places where they may rest or breed.
9. As this information was not available during the application stage the Council were unable to substantiate the applicant's claim that the proposal would not result in any significant adverse ecological or biodiversity impacts. Evidently, the protected species report submitted as part of the appeal has since identified clear evidence of bats roosting within the existing side extension proposed to be demolished, and as such there is a high likelihood that any works would have an adverse effect on them. The proposed development would therefore not meet the exceptional circumstances under which it may be appropriate to condition such ecological surveys and impact assessments.

10. Accordingly, whilst the Council should have communicated their position with respect to the lack of biodiversity conservation information during the application process, I do not consider their actions to represent unreasonable behaviour in this instance. This in part has been attributed to the timeframe leading up to the submission of the application whereby the applicant should have appropriately obtained the necessary information to include with the application, as well as the Council's indication to the applicant that they would refuse the application on other grounds regardless and were ultimately waiting for confirmation from the applicant as to whether the proposal would be amended before determining the application.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason the application for the award of costs is refused.

J Gibson

INSPECTOR