



Costs Decision

Hearing Held on 22 October 2020

Site visit made on 23 October 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2020

Costs application in relation to Appeal Ref: APP/P1615/W/20/3255023 The Rising Sun, Coleford Road, Woodcroft, Chepstow NP16 7HY

- 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 Worthy Developments Ltd for a full award of costs against Forest of Dean District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of a first floor extension over existing public house kitchen and toilets to provide additional accommodation with associated works.
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Decision

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

The submissions for Worthy Developments Ltd

2. In summary, it is argued that after 8 years of effort and considerable design iterations to address the various matters that had been raised, if the Council had worked collaboratively and engaged with the appellant, the appeal would not have been necessary.
3. In particular, it is explained that a reason for refusal relating to scale and character did not appear on the Council's earlier decision notices for a larger scheme and to refuse the present proposal based on a similar design was unreasonable.
4. The second reason for refusal, concerning overlooking, could have been resolved during the processing of the application, however, no attempt was made by the Council to engage with the appellant on this matter. Indeed it was only raised in the reason for refusal and not in earlier advice on the issues that needed to be addressed.
5. The third reason for refusal concerning an unsafe access was not supported by clear evidence as the access has been present for some considerable time and again no opportunity was given to the appellant to collate and issue information to address this issue.
6. The reason in relation to insufficient information submitted to address ecology was not justified as this information had in fact been provided to the Council. Furthermore, the ecology officer issued comments only the day before the target date for determination and no attempt was made by the Council to engage with the appellant to extend the target date and/or allow this matter to be addressed. This was unreasonable behaviour.

7. It is also raised that the Council had referenced a Noise Impact Assessment in the Environmental Health Section's response and the related planning report when there is no evidence that the document existed.

The response by Forest of Dean District Council

8. The Council set out in its response that the first two reasons for refusal, concerning character and appearance and impact on living conditions, are matters of judgement. The Council argue that it is assumed that the appellant has submitted the best scheme available for consideration and that it was not, in summary, unreasonable to determine the scheme as submitted on its merits.
9. It highlights that the responses from consultees, such as highways and ecology, were available on the Council web site. In particular, in relation to ecology, the applicant had been informed with a previous returned submission in December 2018 that additional ecological information may be required. The last pre-application advice that the application sought was in 2015 (response in January 2016) where parking, impact of the pub/community facility on the living conditions of the occupiers of the flats were some of the main issues raised by the Council.
10. The Council argue that it has acted reasonably throughout, determined the submitted scheme within the 8 week target and while there is a difference of opinion this does not mean that this represents unreasonable behaviour.

Reasons

11. The Planning Practice Guidance (the 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.
12. The Guidance also sets out that all parties are expected to behave reasonably throughout the planning process although costs can only be awarded in relation to unnecessary and wasted expense at the appeal stage¹. It appears that the appellant did not engage in pre-application discussions in respect of the appeal proposal in the period shortly before the application was submitted to the Council. While discussions between the applicant and the Council would have been helpful in this case, it was not unreasonable for the Council to determine the application in a timely fashion based on the details that had been submitted. It was open for the applicant to submit a further planning application to seek to address the reasons for refusal rather than appeal.
13. In terms of the reason for refusal concerning character and appearance the Council provided satisfactory evidence to support this reason for refusal. I have highlighted differences between the earlier scheme that was considered by the Council and at appeal and this could allow a different view to be taken between the merits of the two schemes. The consideration of character and appearance is a matter of judgement and while I disagree with the Council on this matter this does not constitute unreasonable behaviour.
14. In respect of matters concerning overlooking and highway safety it will be seen from my decision that I agree with the Council. These reasons for refusal were

¹ Behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.

supported by adequate evidence and the inclusion of these reasons for refusal in the decision notice does not therefore represent unreasonable behaviour.

15. In respect of the fourth reason for refusal, concerning ecology, the applicant would have been aware this was an important issue when the earlier submission had been returned. With the latest planning application it seems that a bat activity survey report had been submitted but this relied on a previous survey which had not been included and the preliminary ecological report by Acer Ecology had not been enclosed with the submissions. It appears that the applicant's subsequent submissions were in hand at that time and that these may have resolved the issues raised by the Biodiversity and Countryside Officer. However, it is for the applicant to submit the necessary and complete evidence and while it was regrettable that the Council did not pick this matter up earlier, based on the information the Council had available, the reason for refusal was justified.
16. Furthermore, resolving the ecological issues could not have been addressed by a planning condition as having regard to Circular 06/2005 I do not consider there are exceptional circumstances and the extent that any bats may be affected by the proposed development needed to be established before planning permission could be granted. At the appeal stage once further evidence had been submitted the Council withdrew the reason for refusal thereby minimising the need for further work on this issue. In all the circumstances, I do not consider that the Council's approach was unreasonable or caused wasted expense in the appeal process.
17. There are concerns raised regarding the Noise Impact Assessment referred to by the Environmental Health Section, but which could not be subsequently found by either main party. However, the comments from the Environmental Health Section tended to benefit the applicant as this did not, at that time, lead to the impact on the living conditions of the proposed occupiers of the flats being a reason for refusal. This had been a concern of some interested parties and I considered it as a main issue at the hearing. Consequently this was a matter which required the applicant to address but this was not as a result of the Council's actions and therefore there is no substantial issue with regard to the Council's behaviour in this respect.
18. As a result, it follows that in terms of the issues raised by the applicant in the costs claim, I cannot agree that the Council has acted unreasonably in this case and the appeal could not have been avoided. Accordingly, the appellant was not put to unnecessary or wasted expense in the appeal process.

Conclusion

19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and an award of costs is not justified.

David Wyborn

INSPECTOR