
Costs Decision

Site visit made on 5 October 2020

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2020

**Costs application in relation to Appeal Ref: APP/L1765/W/20/3247307
The Tree Nursery, The Barn North of Sandy Lane, Sandy Lane, Shedfield
SO32 2HQ**

- 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 P Mifsud for a full award of costs against Winchester City Council.
 - The appeal was against the refusal of planning permission for construction of a replacement dwelling.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. The Planning Practice Guidance (PPG) advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
3. The application was registered as a proposal for a replacement dwelling but the Council subsequently treated it as a proposal for a new dwelling in the countryside. Notwithstanding the wording on the application form and decision notice, this was the correct approach as there is presently no dwelling on the site to replace. The fact that prior approval has been granted for change of use of the existing agricultural building on the site to a dwellinghouse is a relevant material consideration to be taken into account. The Council had regard to the fallback position but, applying its s38(6) duty, took the view that it did not outweigh the conflict with the development plan.
4. The appellant contends that the Council should have adopted a staged approach to the fallback argument by asking the following questions: 1. Whether there is a fallback position, that is to say whether there is a lawful ability to undertake such a development; 2. Whether there is a likelihood or real prospect of such a development occurring; and 3. If the answer to the second question is 'yes', a comparison must be made between the proposed development and the fallback use. This is consistent with the methodology taken by the courts, including in the case of *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314.
5. The Council applied this approach in assessing the application, but its analysis did not follow through to the final decision. The principal reason for refusal is unhelpful in that it refers to an 'additional' dwelling in the countryside, without

making any reference to the fallback. It reads as an objection in principle, which in fact it is, but relies upon the absence of any 'overriding justification'. It is evident from the officer report that there was a comparison of the appeal scheme against the permitted development fallback, the implicit finding being that the appeal scheme would have a greater and more harmful impact on the character and appearance of the area. Given the content of the appellant's appeal submissions it would have been advisable for the Council to have clarified its arguments in a formal statement of case, rather than simply relying upon the officer report.

6. The PPG makes clear that local planning authorities are at risk from an award of costs where they fail to produce evidence to substantiate each reason for refusal. In my view, that is not the case here. Reading the decision notice and officer report together, the Council's position is comprehensible. That the arguments could have been put forward in a more intelligible manner, and the refusal reason phrased differently, does not amount to unreasonable behaviour and is not a basis for awarding costs against the authority.
7. The appeal was required to resolve genuine matters of dispute between the parties and the appellant's evidence was a necessary part of that process. Unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated. I therefore conclude that an award of costs is not justified and the application is refused.

Robert Parker

INSPECTOR