



Costs Decision

Site visit made on 5 January 2021

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th February 2021

Costs application in relation to Appeal Ref: APP/G1630/W/20/3256831 25 Church Road, Bishops Cleeve, Cheltenham GL52 8NE

- 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 Stationwood Property Ltd for a full award of costs against Tewkesbury Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for erection of first floor extension to 35 Church Road to provide 3 one bedroomed residential apartments.
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Decision

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

Reasons

2. 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. The aim of the costs process is to encourage all those involved in the appeal process to behave in a reasonable way.
3. Unreasonable behaviour can be either substantive, relating to the issues arising from the merits of a case or procedural, relating to process, in nature. In addition "unreasonable" is used in its ordinary meaning as established by the courts¹ and not in the stricter law definition of "Wednesbury" unreasonable.
4. Applicants for costs will also need to demonstrate clearly how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense in order for their application to succeed.
5. In this case the appellant contends that in refusing the planning application the Council has acted unreasonably from a substantive point of view, which relates to the issues arising from the merits of the appeal. The areas of unreasonable behaviour identified by the appellant relate to evidence justifying overturning advice with respect to likely car ownership of potential occupants of the development, advice of the Council's Conservation Officer and the lack of reference to the Council's established lack of five year supply of housing land.
6. The application was considered by the Council's Planning Committee in June 2020 with an officer recommendation to permit. The committee makes decisions on behalf of the Council, does not always need to agree with officers'

¹ Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774

recommendations and Members are entitled to make their own planning judgements which may not always be aligned to those expressed by officers. However, those decisions should be made in accordance with the development plan and other material considerations.

7. With respect to highways considerations I can see that the Highways Authority had no objection to the proposed development, but the Committee expressed concerns about parking provision in the vicinity of the site. This concern was not based on the effect on the safety of highway users, but rather the absence of on-site car parking with the proposal and the resultant potential effect on how the development may function and the general character of the wider locality. Members were advised of the potential number of cars that may be associated with the three flats and the likely effect on highway safety. However, an alternative judgement was made based on local knowledge and the potential effect of the development.
8. The advice provided by the Highway Authority would have been based on highway safety and engineering matters rather than the reason for refusal relating to the displacement of parking and actual parking on residential roads in the wider area and the way the development may function in its settlement context. I have taken account of the evidence presented to Members and the appellant's concerns that the Committee was not aware of advice within the Transport Technical Note, but it is clear to me that their decision was based on knowledge of the site and surroundings. I am aware that the reason for refusal identified an emerging development plan policy, but it also clearly articulates relevant paragraphs within the National Planning Policy Framework (the Framework). Furthermore, there is insufficient evidence before me that a site visit is likely to have led to the Committee making an alternative decision.
9. Consequently, on this particular issue I am satisfied that the Committee considered there to be other material considerations different from the technical advice provided which led them to the view that refusal of the proposal was warranted for reasons relating to the provisions of the Framework.
10. Secondly, paragraph 4.4 of the Committee Report clearly sets out the Conservation Officer's '*No objection to the amended design*'. This is different from 'less than substantial harm' which would result in the need for consideration of whether public benefits outweigh the harm caused by the proposal. The report goes on to state that the design of the proposal accords with the recommendations of the Conservation Officer. However, it appears that the author of the report took a different view point and considered there to be less than substantial harm to heritage assets and their setting. The report then goes on to weigh the public benefits of the development against the harm identified and conclude that the benefits outweigh the less than substantial harm to the heritage assets.
11. The evidence before me also appears to indicate that the Committee was advised that the Conservation Officer considered that the proposal would result in less than substantial harm to the heritage assets and their setting. This is not an accurate reflection of the advice provided. Nonetheless, the advice of the Conservation Officer is quite clearly set out in the written report and the Planning Officer was entitled to arrive at a different conclusion to their colleague. The reasons why the Officer may have reached a different

conclusion could be more clearly expressed, but it appears to me that in spite of the advice before them the Committee decided to refuse the application for reasons articulated in the second reason for refusal and in the light of the development plan. Therefore, in this regard I do not find that the Council behaved unreasonably.

12. Finally, the appellant is concerned that there is no evidence from the Committee that the Council's lack of five year housing land supply was considered. In this particular case, it is important because a lack of housing land supply triggers the tilted balance when considering planning decisions and also because the supply of housing is a material consideration in the light of national planning advice and the development plan.
13. The Committee Report quite correctly give suitable weight to the proposed provision of three one bedroom flats which is identified within the Strategic Housing Market Assessment (SHMA). However, there is no reference to wider housing requirements across the Borough in the report and no specific evidence that the matter was discussed at the meeting. In the light of the Officer recommendation I can understand why the five year housing land supply issue was not raised in the written report, but this issue should have been brought to the attention of Members when it became clear that the Officer recommendation to permit may be overturned.
14. Nonetheless, the evidence presented to me demonstrates that the Committee is well-informed and has an understanding of the implications of there being an absence of five year housing land supply. This is demonstrated by the discussions that took place at the same Committee meeting in relation to a planning application for 50 new dwellings at Land off Ashmead Drive, Gotherington. In that case a Committee Member raised the issue of applying the tilted balance and the relevant parts of the Framework. I therefore conclude that the Committee understood the decision they were making and the need to apply the tilted balance in certain circumstances. As such, on this issue I do not find that unreasonable behaviour has been demonstrated.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that a full award of costs is not justified.

A A Phillips

INSPECTOR