
Costs Decision

Site visit made on 16 February 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 February 2021

Costs application in relation to Appeal Ref: APP/D3125/W/20/3261904 2 Witney Road, Long Hanborough, Oxfordshire OX29 8BJ

- 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 Luke Carter of LC Holdings Ltd for a full award of costs against West Oxfordshire District Council.
 - The appeal was against the refusal of planning permission for the erection of 10 one bed flats together with associated works including closing two accesses, the formation of one new vehicular and one new pedestrian access and landscaping and biodiversity works.
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Decision

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

Reasons

2. 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 caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant contends that the reasons for refusal are unfounded and consequently, the Council acted unreasonably. Moreover, he was not given a reasonable opportunity to address the Council's concerns by amending the scheme. Furthermore, the applicant understood that he had been given until 16 November 2020 to complete a legal agreement to provide a planning obligation. Had it been completed it would have avoided the second reason for refusal. Finally, the applicant considers that the Council's approach is inconsistent with other nearby and recent approvals in the same street.
4. The PPG gives examples of unreasonable behaviour where local planning authorities are at risk of an award of costs. This includes the following:
 - If they make vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
 - Not determining similar cases in a consistent manner.
5. The reasons for refusal set out on the decision notice are reasonably specific and relevant to the application. Each one identifies which policies in the development plan the Council considered to be most relevant. Additionally, the concerns of the Council regarding the impact on the character and appearance of the area and the living conditions of the neighbour were adequately

substantiated by the Council in its delegated report. Amplification regarding the refusal reasons was provided in the Council's appeal statement in relation to both refusal reasons.

6. It will be seen from my determination that I found that the proposal conflicted with the development plan and national policy in relation to the impact on the character and appearance of the area. Therefore, although I did not find harm in relation to the living conditions of the occupants of 7 Millwood End, it follows that the entirety of the first refusal reason was not unfounded. Furthermore, the assessment of the proposal's impact on living conditions requires the exercise of planning judgement. Whilst the applicant does not agree with the Council's judgement, it does not follow it was unreasonable. The appeal procedure provides a way to test that judgement. It follows that I am not persuaded that the Council acted unreasonably in this regard.
7. It is up to the discretion of the local planning authority whether to seek and/or accept amendments during the course of a planning application, which they must balance with the requirement to make a timely decision. Accordingly, there is no obligation to allow time for amendments if they consider a proposal to be unacceptable. Moreover, the evidence indicates that given the planning history of the site, there had been previous discussions between the applicant and the Council regarding the scale of development that would be appropriate. It is not shown that the Council proceeding to make a formal decision based on the plans and information submitted amounted to unreasonable behaviour within the meaning of the PPG.
8. There is little evidence to substantiate that the Council had committed to allowing the applicant until 16 November 2020 to submit a completed planning obligation, nor that they would not make a formal decision prior to that date. In any event, although a completed planning obligation may have addressed the second reason for refusal, it did not represent the entirety of the Council's case. Accordingly, it is not shown that even if the Council had waited until the relevant agreement was signed, that it would ultimately have led to a different outcome. It follows that the appeal would not have been avoided altogether.
9. The applicant specifically mentions two other permitted schemes at Witney Road. The first relates to the 9 unit scheme permitted at the appeal site that is currently being constructed, and the other to a development for 7 one-bed flats at 39 Witney Road. It will be seen from my determination that I found there were notable differences between these approvals and the appeal proposal. It is not otherwise shown that the appeal proposal was so similar to nearby recent approvals that the Council failed to determine similar cases in a consistent manner. Hence, the Council did not act unreasonably in this regard.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Helen O'Connor

Inspector