



Costs Decision

Site visit made on 12 January 2021

by B Davies MSc FGS CGeol

an Inspector appointed by the Secretary of State

Decision date: 22 February 2021

Costs application in relation to Appeal Ref: APP/J1860/W/20/3258733 The Leys, Shelsley Beauchamp, Worcester, WR6 6RB

- 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 and Mrs Webber for a full award of costs against Malvern Hills District Council.
 - The appeal was against the failure to give notice within the prescribed period of a decision on an application for construction of an extension to house a home-gym, sauna and swimming pool.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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.
3. The appellant submits that the Council has acted unreasonably and therefore caused the appellant to incur unnecessary expense because:
 - 1) it has not acted in a timely fashion;
 - 2) it has not appropriately differentiated between policy and guidance; and
 - 3) its conclusion regarding design of the extension is not justified.

Timeliness

4. Due to the difficulties caused by COVID-19 the appellant agreed that the Council could have a 2-week extension to the determination period to allow a site visit to take place. The Council took an additional week to respond with their findings and failed to respond to an email requesting an update from the appellant.
5. The appellant subsequently agreed that the decision should be made on the original plans for the purposes of expediency. No response to this was received from the Council and a week later the appellant submitted an appeal against non-determination.
6. I consider this a reasonable course of action given the protracted history, lack of response and absence of a clear date for a decision, in addition to being

approximately 18 weeks from validation of the application. No explanation for the continued lack of determination has been provided by the Council.

7. While early discussion between applicants and the Council is advisable, in this case I do not consider that the absence of this is of great relevance to the deficiency in response and lack of determination.

Interpretation of policy and guidance

8. Supplementary planning documents (SPDs) can be a material consideration of great weight but are not part of the development plan, even if adopted. This context is not provided in the Council's statement, and I find that the decision is entirely based on the guidance in the SPD, without genuine reference to adopted policies.
9. As an example, the SPD recommends that front extensions should generally be small and sensitively designed. In this context, the Council has in part based its reason for refusal on the significant projection forward of the extension from the 'front' elevation. The fact that the 'front' elevation cannot be seen from the public domain is clearly of relevance given the objectives of the overarching policy. There is no evidence that the policy context of the guidance was taken into consideration.

Assessment of the design

10. The Council assessed the design to be incongruous because the timber 'rural barn style' and 'contemporary' design of the extension roof would jar with each other. No substantial explanation for this strong statement, or analysis of why this design would cause harm, is given. The appellant has provided a clear explanation for the rationale behind the design, which is not addressed in the Council's reasoning. It is inevitable that there is a subjective component to assessment of design, and for this reason I consider it imperative that a conclusion of harm on these grounds is fully explained.
11. At the appeal stage, the Council provided further detail of their concerns regarding the roof design and overall harm to the original house. It stated that the unsymmetrical form and design of the roof does not follow the form of the existing projecting pitched gables, and that overall, the extension does not reflect the design and materials of the original dwelling, as recommended in the SPD. However, the SPD suggests that an extension should 'normally' reflect the original dwelling, and no assessment of the proposal as an exception to this general guidance has been provided.
12. I also consider that the choice between a proposal reflecting the original dwelling or being an outstanding, innovative design is a false one, and not supported by policy. Each design will need to be considered on its own merits, and it is entirely possible that an extension can be built that contrasts with the host house, without being an innovative example of architecture or causing harm to character and appearance.

Conclusion

13. For the above reasons, I find that the Council has behaved unreasonably by causing unjustified delays leading to non-determination. In addition, there was a lack of genuine reference to the adopted policies of the development plan and

an unjustified reason for refusal on design grounds. I consider that the costs associated with an unnecessary appeal have therefore been incurred.

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

15. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Malvern Hills District Council shall pay to Mr and Mrs Webber, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to Malvern Hills District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

B Davies

INSPECTOR