



Costs Decision

Site visit made on 1 February 2021

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 March 2021

Costs application in relation to Appeal Ref: APP/W3330/W/20/3261062 Three Oaks, Combe Florey Road, Ash Priors, Taunton TA4 3NQ

- 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 Brian Forsey for a full award of costs against Somerset West and Taunton Council.
 - The appeal was against the refusal of planning permission for the retention of existing mobile home for use as ancillary annexe accommodation.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises, regardless of the outcome, costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant has set out in the written submissions the case for a full award of costs, on the basis, in essence, that the Council acted unreasonably in respect of the substance of the matter under appeal, and it was unreasonable to refuse planning permission. In particular, it is argued that the Council disregarded the fact that the proposal is for annexe accommodation and instead referred to policies which are not applicable to the circumstances, determining the application on the basis that it would be self-contained accommodation with no functional link to the main dwelling. Furthermore, the Council referenced the mobile home variously, including as a new building and an unauthorised unit of accommodation and, as a consequence of all these matters, this led to the incorrect judgement that the location was one that did not support further residential units. It is argued that this was not an apt description or accurate understanding of the proposal.
4. Additionally, it is argued that the Council made vague, generalised and inaccurate assertions about the impact of the proposal on the character of the main dwelling and on the surroundings. The applicant also makes the case that there was failure to give adequate weight to material planning considerations, including most significantly, the existence of a valid fallback position which would have a greater impact.
5. The applicant believes that the Council has not adequately defended its reasons at appeal. It is explained that it raised arguments such as because the proposed dwelling met the accommodation needs in 2012 no further

- accommodation should be required, the proposal is contrary to the condition on the original permission to remove the mobile home and the mobile home is effectively a self-contained dwelling, and none of these arguments justify the reasons for refusal.
6. The Council has responded in writing and, in summary, consider that the failure to remove the mobile home in accordance with the planning conditions resulted in the present planning application being submitted and the proposal was correctly determined against relevant policies of the development plan.
 7. It is explained that the Council judge that, in accordance with the third reason for refusal, it is not considered that the retention of the mobile home would be less damaging than an extension or conversion. It refers to the garage that has not yet been built which could provide the required accommodation. The Council does not accept that there is a functional link between the mobile home and the new dwelling due to the distance of separation and the mobile home being fully-self-contained and therefore the approach of the Council has been sound and justified.
 8. The Council argue that the planning appeal that the applicant submitted was considered but the circumstances were substantially different and had no bearing on what was before the Council for consideration. The Council accept the case made regarding the fallback position, but with qualifications, and that it judged that the removal of the mobile home from its unauthorised position and replacement to the rear of the dwelling would accord with the previous permissions and result in a closer and functional link with the main house.
 9. Examining these matters, I consider that the Council placed too much emphasis on the history of the mobile home and the requirement for its removal rather than on the case made that it was now sought to be retained as ancillary annexe accommodation. Nevertheless, even having regard to the stated ancillary way the accommodation would function in relation to the dwelling, it was a matter of planning judgement as to whether the separation of the mobile home from the main dwelling was such that it could not practically function in an ancillary capacity. It will be seen from my decision that I consider that the balance falls in favour of the proposal in this regard, however, as this was a matter of judgement, it was not unreasonable for the Council to conclude otherwise on this planning matter. In these circumstances, there was merit in the analysis which follows from the conclusion that the mobile home would form a self-contained unit and therefore would not comply with the development plan which sought to control new units of accommodation in the countryside.
 10. The Council did have some regard to the fallback position and also considered that there were policy compliant options, such as an extension, which would cause less harm to the character and appearance of the area than the appeal proposal. It will be seen that while I disagree with this analysis it was a matter of planning judgement as to the effect of the proposal on the surroundings and for the Council to come to a conclusion that there would be harm in this respect does not demonstrate unreasonable behaviour.
 11. It follows that in relation to the substantive issues, the Council made sufficient planning arguments to defend key aspects of the reasons for refusal and the appeal could not have been avoided.

12. 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. Accordingly, the applicant was not put to unnecessary or wasted expense.

Conclusion

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

David Wyborn

INSPECTOR