



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/Q3305/W/20/3261275 Land between Budds Croft and Swedish Cottage, Brewery Lane, Holcombe, Shepton Mallet BA3 5EF

- 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 A Durici for a full award of costs against Mendip District Council.
 - The appeal was against the refusal of planning permission for the proposed erection of self-build dwelling and associated works.
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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 explained, in summary, that a full award of costs is merited because the Local Planning Authority did not provide empirical evidence or reasoned justification as to why their decision to refuse planning permission departed from 'no objection' advice set out in Somerset County Council's Rights of Way Officer consultation response.
4. The applicant's statement of case provided evidence to confirm a legal right to access the site and the Council's evidence did not acknowledge this fact or offer any additional evidence to substantiate the reason for refusal set out in the officer's delegated report.
5. It is argued that given that the refusal relates solely to the use of the public footpath as the means of proposed vehicular access, the case is made that having regard to the provisions of the development plan, national planning policy, and other relevant considerations, the development proposal should reasonably have been permitted. The applicant believes that the refusal of planning permission therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the Guidance. The applicant, it is argued, has therefore been faced with the unnecessary expense of lodging an appeal.
6. In response the Council has explained that the Somerset County Public Rights of Way Section are a consultee and are purely assessing whether the proposal

would affect the physical elements of the right of way. The Council explain, as the determining authority, it needed to take a broader view of the impact of the application than the Rights of Way Section and in this regard the case officer decided to assess the overall impact of the scheme, and was entitled to do so. It is explained by the Council it clearly set out that the right of way was restricted in width, further vehicular traffic serving the proposed dwelling would result in additional hazard, inconvenience and loss of amenity to all users and the scheme was contrary to the development plan. The Council contend that this was not unreasonable behaviour.

7. In looking at these matters, the Highway Authority examined matters in respect of the junction of the drive with Brewery Lane and after the additional submissions from the applicant and his advisors raised no objection to the proposal. In doing so, as set out in their email of 6 July 2020, the Highway Engineer explains that the Public Rights of Way Officer would need to consider the element of the scheme along the private access road.
8. The Rights of Way Officer response raised no objection to the proposal subject to a range of general comments and that the applicant can demonstrate an all purpose vehicular right.
9. The Council Planning Report acknowledges in the assessment of the highway issues that the Highway Officer and the Rights of Way Officer do not object. However, it seems to me there are various elements to the consideration of the issues along the lane. The Rights of Way Officer, in my view, would have largely examined effects on walkers and the surface, but there is also other issues, for instance, the potential for two vehicles to meet as a result of the proposal and the related effects on vehicle safety and convenience for drivers. This does not appear to be a direct rights of way issue that would affect walkers or the surface. There is no substantive evidence to confirm that this issue, for instance, was covered by either of the two consultees. This type of issue was therefore a matter which required the Local Planning Authority to examine the impacts in their entirety when considering the suitability of the lane to accommodate the traffic associated with the additional dwelling.
10. The Planning Report would have benefited from a more comprehensive analysis of the appellant's case, including the highway and access evidence, as well as a more rigorous assessment of the various potential impacts on the users of the lane. However, I accept there is merit in the argument that the Local Planning Authority could look at the broader impact of the proposal on the lane and it was a legitimate planning approach to consider whether overall the effect was acceptable. This was a matter of planning judgement. The restricted width of the lane, with the passing spaces in private ownership and not guaranteed or could be required to be retained, meant that the physical limitations were such that it was not unreasonable for the Council to assess the resulting situation would be so unsatisfactory as to warrant refusal. It will be seen from the decision that I consider that the balance falls in favour of approval, nevertheless, this does not demonstrate that the Council acted unreasonably by judging the situation caused such harm that the balance fell in the opposite direction on this matter.
11. 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

and the appeal could not have been avoided. Accordingly, the appellant was not put to unnecessary or wasted expense.

Conclusion

12.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 is not justified.

David Wyborn

INSPECTOR