
Costs Decision

Site visit made on 4 March 2021

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 29 March 2021

Costs application in relation to Appeal Ref: APP/R3325/D/20/3261324 The Oaks, 141 West Coker Road, Yeovil BA20 2HH

- 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 Rickards-Sanger for a full award of costs against South Somerset District Council.
 - The appeal was against the refusal of planning permission for the erection of a detached garage (retrospective).
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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.
3. It was reasonable for the Council to report its Arboricultural Officer's comments to its Planning Committee, as they formed the response of its technical advisor. However, although the applicants' response to an interested party's comments are included in the Committee report, their rebuttal of the Arboricultural Officer's comments do not appear. The assessment in the report of the impact of the garage on trees primarily summarises the Arboricultural Officer's comments with only passing reference to the Arboricultural Report submitted.
4. There is no assessment of whether the potential damage identified by the Arboricultural Officer related to the garage for which permission was sought, or to other works outside the scope of the application before the Council. Nor is there any assessment of whether potential future damage to tree roots from service trenches or water management measures could be mitigated by means of a planning condition. The Council therefore failed to objectively assess the impact of the garage, which was the only development for which permission was being sought. This was unreasonable behaviour.
5. There was clearly a difference of professional opinion between the Council's Arboricultural Officer and the applicants' arboricultural consultant on the impact of the garage on protected trees. The Arboricultural Officer's comments were based on observations on site and professional judgement, and were substantiated. Although they refer in part to matters outside the scope of the development, they also identify specific impacts from the construction of the garage. The applicants' tree report also identifies that excavation associated with the garage may have impacted on the trees' root systems. It therefore

seems to me that the difference between the main parties is the degree of damage caused by the development.

6. The Committee minutes state that the Committee was made aware of the Arboricultural report and the applicants' comments regarding the planning history of the site. Importantly, they also record that the applicants' arboricultural consultant spoke at the Committee. Therefore, although the report was somewhat lacking in assessment, the applicants had the opportunity to put forward their case and to correct any matters that they wished to, before the Council made its decision.
7. Accordingly, the Council had to reach a planning judgement, having regard to conflicting professional opinions, on whether the impact of the garage on the root systems of the trees was likely to have harmed those landscape features, which local planning policies seek to protect. Therefore, although I have reached a different conclusion to the Council on the appeal, I do not consider that it is clear that the development should have been permitted, having regard to its accordance with the development plan, national policy and other material considerations.
8. I also cannot be certain that the Council would have made a different decision on the application even if the Committee report had contained a more detailed and objective assessment of the impact of the garage. An appeal may therefore still have been made. As such, it has not been demonstrated that the Council's unreasonable behaviour resulted in the applicants' incurring unnecessary or wasted expense during the appeal process.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

L McKay

INSPECTOR