



Costs Decision

Site visit made on 19 April 2021

by Baljit K Muston BA(Hons) PGDip MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2021

Costs application in relation to Appeal Ref: APP/C1245/D/20/3264418 Dingle Dell, Godmanstone, Dorchester, Dorset DT2 7AH

- 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 & Mrs Paul Loveday for a partial award of costs against Dorset Council.
 - The appeal was made against the refusal to grant permission for a double garage and linking porch.
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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 (the PPG) advises that costs may be awarded where a party has behaved unreasonably, and where the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. The PPG makes it clear that unreasonable behaviour may be either procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal. The PPG also says that, although costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, behaviour and actions at the time of the planning application can be taken into account in the consideration of whether costs should be awarded.
 4. The applicants' application for costs argues that a number of errors made by the Council at application stage have resulted in them incurring unnecessary expense. The Council has not responded to their application. The PPG says that, where a party has made a written application for costs, clearly setting out the basis for the claim in advance, their case will be strengthened if the opposing party does not offer evidence to counter the case.
 5. The applicants say that the Council determined the application with reference to the wrong set of submitted drawings. It is clear from the email sent by the applicants' agent to the Council on 7 October 2020 that a request was made to "*please substitute the new Fig 2 attached for that submitted*". This was evidently a request to the Council to substitute the revised plans shown in Fig 2 for the originally submitted plans.
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6. The Council replied on 2 November, and explained why it did not consider that the revised plans altered its view that the proposal was unacceptable, that the application would still be refused and that *"you shall then have the right to appeal the Council's decision"*. I agree with the applicants that this email, drafted several weeks after the submission of the revised plans, gives the impression that the impending refusal would be in relation to the revised plans. Despite this, the officer report that recommended refusal made no mention of the submission of the revised plans, and the subsequent decision notice specifically referred to the originally submitted plans from July 2020.
7. I agree with the Council that the amendments in the revised plans did not make the proposal acceptable. However, in the absence of any explanation by the Council, I agree with the applicants that the Council's failure to substitute the revised plans for the original plans, as clearly requested, amounts to unreasonable behaviour. As a result of this unreasonable behaviour, the applicants' agent then had to draft the first paragraph of his grounds of appeal, headed "CORRECTIONS", to deal with this matter. The time spent preparing and drafting this paragraph amounts to unnecessary expense.
8. The applicants also argue that the Council failed to publish the information submitted with their revised plans, the Parish Council's comments on the application, or third party comments, on their website. I have not been provided with any evidence as to whether or not this was the case. In any event, it seems unlikely from the Council's report and reasons for refusal that any comments received from either the applicants or from objectors revising their comments, would have been sufficient to produce a different decision on the application. Beyond the appeal not taking place at all, I have not been able to identify any unnecessary or wasted expense resulting from these alleged failings by the Council.
9. The applicants also argue that the Conservation Officer misread or misunderstood the location of the appeal site in relation to the "key view" identified in the Conservation Appraisal. From the evidence before me, I consider it unlikely that a different understanding of that relationship would have produced a different outcome in respect of the application, and avoided the need for the appeal. Again, other than the appeal not taking place at all, I have not been able to identify any unnecessary or wasted expense resulting from this alleged failing by the Council.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated, solely in respect of the failure to substitute the revised plans for the original plans, and that a partial award of costs in relation to this is justified.

Costs Order

11. 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 Dorset Council shall pay to Mr & Mrs Paul Loveday, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in their agent having to explain the error in failing to substitute the

submitted plans; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to Dorset 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.

Baljit K Muston

INSPECTOR