



Costs Decision

Inquiry Held on 4 - 7 May 2021

Site Visits made on 19 April 2021 & 12 May 2021

by Mrs J Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 18 June 2021

Costs application in relation to Appeal Ref: APP/D1265/W/20/3265649 Homestead Farm Main Street, Bothenhampton, Bridport DT6 4BJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr and Mrs K Hughes for a partial and full award of costs against Dorset Council.
 - The inquiry was in connection with an appeal against the refusal of Dorset Council to grant subject to conditions planning permission for the erection of 1.no. new 4 bed low carbon house (with variation of condition 1 of planning approval WD/D/17/002888 to amend approved plans) without complying with a condition attached to planning permission Ref WD/D/17/002888, dated 23 April 2018.
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Decision

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

The submission for Mr and Mrs Hughes

2. The Applicants' case for a full award of costs is that the Council has behaved unreasonably in that the Council failed to substantiate both reasons for refusal and did not support this with appropriate evidence. In the alternative an application for a partial award of costs is made in relation to the second reason for refusal.
3. The applicants highlight that the application was recommended for approval by officers but refused by the planning committee. Agreement was subsequently reached relating to levels which narrowed the issues between the parties. The Council invited a revised application in order to obviate the need for an appeal, yet the appeal proceeded.
4. In regard to reason for refusal 1 the applicants argue that in relation to harm to the Conservation Area (CA) the evidence of the Council's Heritage witness was directly at odds with previous advice given by Conservation Officers. It was asserted that the height of the development now obstructs a key view due to the increased ridge heights and this introduces an issue that had not been previously identified by officers. It is further argued that the heritage witness attempted to re-examine issues previously considered and determined in the applicants favour by the Council which should not be given weight.
5. The Council in relation to the second reason for refusal referred to policies which made no reference to outlook. Both parties agreed that policy references were included which were not relevant to the consideration of outlook and these were subsequently revised. Furthermore, the applicants argue that the

granting of the 2018 consent makes clear the acceptability of outlook and that no attempt has been made by the Council to quantify the impact on neighbours by any clear or detailed analysis. The Councils' Amenity and Planning witness did not assess the extent of harm on outlook which is said, by the applicants, to be illogical given the reason for refusal was specifically worded to refer to an unduly dominating and overbearing impact when viewed from existing neighbouring properties in Main Street and Duck Street.

6. It is argued that the Council has acted unreasonably by failing to substantiate both reasons for refusal.

The response by Dorset Council

7. The Councils' response is that an award of costs would require unreasonable behaviour on behalf of the Council to directly cause the applicants to incur unnecessary or wasted expense. No such costs have been identified and the Council say that on this basis alone that no award of costs should be made.
8. The Council say that the applicants' contention that the appeal has proceeded unnecessarily is misleading. They repeatedly suggested that the appeal be dealt with by written representations or at a hearing and it was the applicants who insisted on the inquiry procedure. The applicants discussed this point at the case management conference on the 8th of March noting multiple reasons as to why an inquiry was necessary.
9. The applicants suggest that the Council indicated that to obviate the need for an appeal a fresh application should be submitted following the agreement on levels. The Council invited the applicants to submit a further application though this was delayed due to incomplete information from the applicant.
10. The invitation for a fresh application was in order to seek to provide additional information to the Committee which was not available to it at the point of their refusal of the appeal scheme, and to ensure costs were kept to a minimum whilst the public interest in the planning system was upheld. The Council say that far from being unreasonable this was an exemplar of good administration.
11. As not all information was supplied with that submission it would not have been possible for the Council to determine the application prior to the inquiry. Simply put, the Council say the inquiry went ahead as a result of the applicants' failure to supply information and is not attributable to the conduct of the Council.
12. The Council also say the applicants assertion that the Council failed to produce evidence is surprising given that the applicants considered it necessary to submit a detailed rebuttal. Moreover, the fact that the applicants felt it necessary to incur costs rebutting the heritage evidence demonstrates that it has produced evidence to substantiate the reason for refusal.
13. The Council emphasises that the reference to meetings in 2017 and 2018 is misguided as those comments relate to a different scheme than the one built by the applicants and the council's heritage proof explains the different approach. They say that contemporaneous evidence demonstrates that there is a real and tangible issue to be tried between the parties.
14. The Council highlights that it took reasonable and proper actions to clarify matters and it reviewed the merits of its case as the appeal progressed. The Council argue that the remainder of the applicants' submissions are summary

and unsubstantiated points of disagreement. This points to disagreement between the parties rather than any unreasonable behaviour.

Reasons

15. The applicants say the Council failed to substantiate the heritage reason for refusal and highlight that the evidence given by the Council was directly at odds with the advice of previous conservation officers. The Council explained that their response assessed the impact from the high pavement and argued that this had not been previously explored fully. Nonetheless the Council was at liberty to disagree with professional advice given to it where they considered there to be justified reason for doing so.
16. There are naturally subjective aspects to the assessment of the impact of a development on the character of the CA. The Council set out those aspects of the CA Appraisal with which they considered the proposal was in conflict with and cited the specific reasons why the development had an adverse effect. The appellants rebuttal also indicates the need to argue the analysis of planning judgements relating to heritage matters. Whilst I have drawn a different conclusion to that reached by the Council, they referred to the policy justification for their position and expanded on their reasons for refusal. On this basis I do not regard their behaviour to be unreasonable.
17. In relation to the second reason for refusal (RFR2), prior to the inquiry the Council clarified those parts of RFR2 which were inaccurate and the policy references which did not apply. This was undertaken through the process of narrowing the issues between the parties and where the Council sought to ensure the Inquiry focused on areas of disagreement.
18. The applicants argued that the Councils evidence lacked detailed individual analysis of the effect upon the outlook from each of the identified properties. They say this was not undertaken despite the clear conclusion in RFR2 that the development had an unduly dominating and overbearing impact. However, Policy ENV16 does not contain any minimum distance requirements nor does it require an empirical assessment; rather that a planning judgement needs to be made. Whilst I have drawn a different conclusion to the Council on this matter it was not unreasonable for them to consider whether the increased height of the development had an effect on the outlook from the identified properties and the Councils' witness gave his professional view to the Inquiry. For these reasons, I do not find the Councils approach to have been unreasonable.
19. With regard to obviating the need for the Inquiry, the Council invited a fresh application once the 'as built' heights had been clarified. They say that the application was submitted incomplete and this meant it could not be concluded prior to the inquiry. The appeal was lodged prior to the 'invited' application and the applicants made clear representations, both at the lodging of the appeal and at the case management conference, that there was a need for cross examination of detailed evidence. In the light of these factors it seems inevitable that the inquiry would have taken place.
20. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably **and** thereby directly caused another party to incur unnecessary or wasted expense in the appeal process.

21. In my opinion the Council provided evidence to substantiate its reason for refusal though ultimately, character and appearance and outlook are matters of judgement. Although I have drawn a different conclusion and have not been persuaded by the Councils evidence on heritage or amenity matters, it was not unreasonable for the Council to take a different view to that of its officers and refuse planning permission.
22. In any event applicants are required, in any application for costs, to make clear how and why unnecessary or wasted costs have been incurred. Aside from the applicants argument that the appeal should not have been necessary which has already been referred to above, the applicants have not shown that unnecessary or wasted expense in the appeal process, as described in the PPG, has been incurred. Accordingly, no award of costs is made.

Mrs J Wilson

INSPECTOR