
Costs Decision

Site visit made on 5 July 2021

by John Wilde CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 16 July 2021

Costs application in relation to Appeal Ref: APP/Y3940/W/20/3262699/ Thickett Cottage, Malthouse Lane, Upper Chute SP11 9EG

- 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 P Lelliot for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for the demolition of existing dwelling and erection of replacement dwelling.
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Decision

1. The appeal is dismissed.

Reasons

2. I have considered this application for costs in the light of the Government's Planning Practice Guidance (PPG). This advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. It makes clear that a local planning authority are required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour¹.
3. In relation to substantive behaviour they include unreasonably refusing planning applications and promoting vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. In this case planning permission for the proposed development was recommended to be granted by the planning officer but this was overturned by the planning committee. The committee are completely within their rights to do this but in doing so clear and concise reasons for refusal must be given.
5. The appellant's cost application specifies three instances where he considers that the Council have erred and I will deal with each in turn. Firstly, in their statement the Council comment that *the compact arrangement of the 'gullwing' design helped reduce the impact*, and then also say that the proposed changes would change the impact of the dwelling from a compact form to a more elongated one. The appellant takes issue here with the phrase 'compact form',

¹ Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306

which he considers to be an incorrect definition of the extant permission due to its *clear linear form*.

6. I cannot agree that the Council using this term amounts to unreasonable behaviour. What the Council are doing is trying to show that the replacement dwelling would be considerably larger than the extant one. They are quite correct in assessing that the 'gullwing' design would reduce the impact and I see nothing unreasonable in then defining this as compact in relation to the proposed design, which they correctly identify as being an increased length of over 20%.
7. Secondly, the appellant objects to the Council's use of the phrase *views across the valley when looking south*, as such views do not, in his view, exist. However, whilst such views may not exist from the viewpoints shown in the appellant's LVIA, the proposed development would be seen from properties to the north, and the extended design would take a more prominent form in these views.
8. Furthermore, the whole gist of the Council's paragraph 5.02 is designed to show that, in their view, the proposed development would have a greater landscape and visual impact, and they do this by referring to, amongst other things, the greater length and floor area. I am not persuaded that focusing on one small phrase in a lengthy paragraph can be determinative in identifying unreasonable behaviour.
9. The third limb of the costs application relates to the fact that reason for refusal only refers to light pollution from the roof terraces, whereas the Council's statement refers to other aspects such as the increased domestic activity at this level and the fact that such terraces would be out of character with the area.
10. Statements are usually a vehicle for either party to flesh out their arguments and I note that issues such as intrusion from light pollution, noise and motion were referred to in the committee report. Whilst it is unfortunate that these factors did not appear in the Council's reason for refusal they had been debated at committee and moreover, the appellant had the chance to rebut these in his final comments, which indeed he did. I cannot therefore find that the Council have acted unreasonably in this matter.

Conclusion

11. It follows that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated, and an award of costs is not therefore justified.

John Wilde

Inspector