



Costs Decision

Site visit made on 16 August 2021

by James Blackwell LLB (Hons)

an Inspector appointed by the Secretary of State

Decision date: 20 August 2021

Costs application in relation to Appeal Ref: APP/Y3940/W/21/3276180 Tynings Farm, 24 Bulkington Drive, Bulkington SN10 1SN

- 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 T Taylor for a full award of costs against Wiltshire Council.
 - The appeal was against a refusal of planning permission for holiday accommodation.
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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 (PPG) 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. It goes on to state that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example by making vague or generalised assertions about a proposal's impact, by failing to provide evidence to substantiate reasons for refusal, or by preventing or delaying development which should clearly be permitted having regard to the development plan, national policy and other material considerations.
3. Determination of this application primarily hinged on the application of Policy CP39 of the Council's Core Strategy¹. This Policy allows for tourist accommodation to be permitted outside of defined settlement limits, subject to certain criteria being met. The relevant criteria are set out as a type of cascade provision, and vary depending on the particular location of the application site.
4. The first paragraph of the Policy deals with tourist development within "*Principal Settlements and Market Towns*". The second paragraph then moves on to address proposed tourist development which is outside of "*Principal Settlements and Market Towns*", but which is located "*in or close to Local Service Centres or Small or Large Villages*". As the proposed development is located on the edge of Bulkington (defined as a "Small Village" in the CS), this paragraph is relevant to determination of the application. The final paragraph of Policy CP39 goes on to deal with proposed tourist development which is "*away from Principal Settlements, Market Towns, Local Service Centres and Large and Small Villages*". On the basis that such locations would be more isolated, development in such locations is considered as an "exceptional case",

¹ Wiltshire Core Strategy (January 2015)

and must meet the more stringent criteria set out at paragraphs (i)–(v) of the Policy before it can be considered acceptable.

5. In determination of the application, the Council misapplied this Policy. It mistakenly considered the application to be an “exception case” due to its location outside of the built-up settlement of Bulkington. As a result, it assessed the application against the more stringent criteria set out in the third paragraph of CP39. However, given the proposed development would be located “close to” the small village of Bulkington, only the second paragraph of the Policy should have been engaged. This permits tourist development within such areas, subject to an assessment of a proposal’s impact on landscape character and environmentally sensitive sites.
6. If Policy CP39 been applied correctly by the Council in its assessment of the application, the location of the proposal should have been deemed acceptable in principle. This would have meant that determination of the application was then primarily concerned with the proposal’s impact on the landscape character of the area.
7. Any assessment of the application’s impact on landscape character would have necessitated a proper consideration of the fallback position relating to the stables which had been consented under planning permission ref 17/02950/FUL. Given the marked similarities in design, siting, footprint and appearance between the stables and the proposed holiday accommodation, any reasonable and logical assessment should have attributed this fallback at least some degree of weight, particularly in terms of the comparable visual impact. Instead, the Council largely discounted its relevance, on the basis that the appearance of the holiday accommodation would be materially different to the consented stables. In part, this conclusion arose from the mistaken belief that the holiday accommodation would have a brick exterior rather than being primarily timber clad. Had this fallback been properly considered and attributed an appropriate degree of weight in determination of the application, I consider that a different conclusion would likely have been reached, and the impact of the proposal on the landscape character of the area would not have been considered unacceptable. On this basis, I consider that the Council unreasonably withheld permission in conflict with the approach in the PPG. Therefore, a full award of costs is justified.

Costs Order

8. 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 Wiltshire Council shall pay to Mr and Mrs T Taylor the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Wiltshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount.

James Blackwell

INSPECTOR