
Costs Decision

Site visit made on 20 July 2021

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 August 2021

Costs application in relation to Appeal Ref: APP/F9498/W/21/3270497 Springwater Farm, Maunsborough Lane, Elworthy TA4 3PY

- 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 Andrew McKelvey (Nanlann Limited) for a full award of costs against Exmoor National Park Authority.
 - The appeal was against the refusal of planning permission for first floor extension to agricultural building to provide office space to be used ancillary to the main dwelling house together with timber cladding and construction of first floor bridge.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 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.
3. The applicant alleges unreasonable behaviour by the Council, and relies, in particular, on the advice in the PPG that local planning authorities are at risk of an award of costs if they:
 - prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy, and any other material considerations; or,
 - make vague, generalised, or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The application asserts that the Council's Members were misled by the information presented by their Officer; failed to have regard to relevant material in reaching their decision; and misread the plans. This, it is argued, led to a refusal which cannot be supported or justified by the available evidence.
5. Much of the evidence submitted by the applicant relates to the period during the determination of the planning application. The PPG clarifies that, although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in my consideration of whether or not costs should be awarded.

6. The photograph used in the Officer's Committee presentation is date-stamped 12 February 2020, so was taken at a time when there was no foliage on deciduous hedges and trees. There is no compelling evidence to suggest that this photograph had been manipulated, or taken from an artificially elevated position, to exaggerate the visual impact of the proposal from the Public Right of Way (PROW). The applicant's photograph was taken at a different time of year, when the hedge was in full leaf. When I visited the site, in July 2021, the site was not as visible as depicted in the Officer's photograph, but this could be explained by a further 18 months of growth, and the time of year. This was not the only information available to Members when they made their decision, and the Committee Report did also state that only glimpsed views would be available from the PROW.
7. The appellant contends that the Officer's presentation should have included the computer-generated images (CGIs), as they would have assisted Members in forming a view regarding the likely impact of the scheme. However, as these images were illustrative, rather than part of what would have been the approved set of plans, it was not unreasonable not to include them in the presentation. Nevertheless, they were available for inspection, and some Members did view them. Furthermore, the plans, elevations, and sections, gave the Members a very clear depiction of the proposal before them. There is no evidence to suggest that a different decision would have been made if the CGIs had been included in the presentation. Overall, therefore, I do not find that Members were presented with misleading information.
8. The Committee Report included the Parish Council's support for the proposal. It also recorded the contents of the consultation reply from the ROW and Access Officer, including the comment that "*the proposed development will be largely shielded from view from those using the public right of way as it is screened from it by the existing hedge*". The Committee Report also included the relevant part of Policy SE-D1 of the Local Plan, which provides support for home-based businesses. These matters were, therefore, before Members when they made their decision. The weight to be attributed was a matter for them, as decision-makers, but the evidence does not indicate that they failed to have regard to this relevant material.
9. The applicant contends that the Council's conclusion of harm to the character and visual amenity of the surrounding landscape was not reasonable, given the topography of the site and the relative heights and locations of the buildings. It is further alleged that the Council failed to appreciate that the proposal was for an upward extension of an existing building, so the siting, length and depth of the proposed structure were already fixed. However, the Committee Report states that "*the proposed development consists of the upward extension to an existing agricultural storage building*". The Report also refers to the topography of the site and the relative locations of the buildings. The plans before the Members, including the sectional drawings, showed the relative heights of the buildings. Consequently, there is no evidence that the decision was made on a misreading of the plans.
10. The impact of a development on the landscape is a somewhat subjective matter, requiring qualitative assessment. More objective analysis is often produced in the form of a landscape and visual impact assessment (LVIA) compiled by a suitably qualified expert. In this case, the application was not supported by a LVIA. Consequently, given the strong support for the protection

of the National Park landscape in local and national policies, it was not unreasonable for Members to give significant weight to the expert views of the National Park's Landscape Officer, who advised that the development would result in "*a structure that is prominent in its setting and somewhat unrelated in scale, form and materials to the existing associated dwelling to which it is visually linked in this setting*".

11. The Council's Committee Report and Statement of Case provide a clear rationale for the decision. Although both were concise, in terms of the analysis of the impact on the landscape, the points of issue were evident, and there is no evidence that any of the information relied on was inaccurate. Whilst I concluded, on the evidence, that there would not be a harmful impact on landscape character, this was a largely subjective judgement in the absence of a LVIA. It was not manifestly unreasonable for the Council to arrive at a different conclusion on this issue. Having done so, development plan and national policies on landscape protection would not have indicated that the proposal should clearly be permitted.
12. The PPG advises that, where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Nick Davies

INSPECTOR