



Costs Decision

Site visit made on 3 August 2021

by C J Ford BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2021

Costs application in relation to Appeal Ref: APP/D1265/W/21/3275012 124 Wyke Road, Weymouth DT4 9QR

- The application is made under the Town and Country Planning Act 1990 as amended, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Miss Fiona King and Mr James Perry for a full award of costs against Dorset Council.
- The appeal was against the refusal of the Council to grant planning permission for replacement of existing bungalow with a detached dwelling.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG), advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. It adds 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 unreasonably refusing a planning application, or behaving unreasonably in relation to procedural matters at the appeal.
 3. The appellants consider there is no evidence that the Council took into account amended plans submitted on 8 February 2021 in making its decision. However, paragraph 2.1 of the Officer Report (OR) noted that amended plans had been received which replaced front dormers with roof lights and this change was also referred to in paragraph 11.5 of the Planning Assessment section of the OR.
 4. Paragraph 2.1 did not list the full extent of the proposed amendments which were set out in the appellants' covering email of 8 February 2021 and which included a significant reduction in the ridge height of the proposed replacement dwelling. Furthermore, paragraph 11.5 of the OR incorrectly stated the section plan showed the eaves of the proposed dwelling would sit much higher than the ridge of 122 Wyke Road. Nevertheless, the Council's email responses of 10 and 11 February 2021 clarified the proposed amendments (plural), were deemed to be insufficient to overcome the Council's original concerns about the scale of the dwelling being two full storeys with rooms in the roof. This particular scale concern was subsequently expressed within the OR and the reasons for refusal.
 5. Consequently, notwithstanding the shortcomings of the OR identified above, I am satisfied from the information before me that the Council did take into account the amended plans in making its decision and that it had a full understanding of the proposed scheme. Furthermore, as the amended plans did not overcome the Council's original concerns about the scale of the proposed dwelling, it is apparent that an appeal would be unavoidable if the
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- appellants were to pursue planning permission for a house comprising two storeys with rooms in the roof.
6. While third parties were not reconsulted upon the submitted amended plans, the appellants recognise there is no statutory duty to do so. Furthermore, given the Council were already of the opinion that the amendments did not overcome its concerns, reconsulting would have been a wasteful exercise for those involved. As interested parties had the opportunity to make representations on the amended plans at the appeal stage, no procedural unfairness has arisen through the subsequent decision to allow the appeal.
 7. The appellants' note that Weymouth Town Council (TC) were consulted on the appeal and have expressly indicated their continued support for the proposal, information which has not been imparted by Dorset Council. However, as the TC supported the original unamended scheme, the reporting of no change in the TC's position would be of no direct consequence.
 8. While it would have been helpful for the Council to express its views about the suggested amendments to the first floor layout put forward at the appeal stage, the failure to submit such comments does not amount to unreasonable behaviour, particularly in the context that it is apparent the changes would not have overcome the Council's main concerns about the scale of the proposal.
 9. Part of the Council's first reason for refusal lacked clarity because it erroneously referred to the house number of the appeal site in respect of harm caused to neighbouring amenity. The appellants' appeal statement specifically requested that the Council identify the relevant neighbouring property. As the Council failed to do so, the lack of clarity persisted at the appeal stage and unreasonable behaviour has thereby been demonstrated. Nevertheless, it is clear from the wording of the reason for refusal that the defined harm primarily related to 120 Wyke Road and 'to a lesser extent' the unidentified neighbouring property, which could only credibly be 122 or 126 Wyke Road. The appellants duly commented on the amenity concerns in respect of the occupiers of No 120 in their appeal statement and subsequent response of 26 July 2021.
 10. While unreasonable behaviour by the Council has therefore been established, costs can only be awarded where the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The evidence outlined above indicates that an appeal could not have been avoided altogether, such that a full award of costs is not warranted. Moreover, the unreasonable behaviour found has only directly resulted in the appellants' briefly seeking clarification of the relevant neighbouring property within their appeal statement, which was further to the appellants' reasonably having to address the primary alleged harm to 120 Wyke Road. As such, they did not incur any tangible additional expense that would merit a partial award of costs.
 11. In light of the above, it is found that unreasonable behaviour, incurring unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated.

Conclusion

12. For the reasons given above and having had regard to all other matters raised, the application for an award of costs is refused.

C J Ford

INSPECTOR