
Costs Decision

Site visit made on 24 August 2021

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2021

Costs application in relation to Appeal Ref: APP/Y3940/W/21/3269473 Land to the rear of 107 Bouverie Avenue South, Salisbury SP2 8EA

- 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 Lovatt-Williams for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for erection of a 3-bedroom bungalow to the rear of No 107 Bouverie Avenue South, associated access and driveway and hard and soft landscaping.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicants have applied for costs on substantive grounds on the basis that the Council has prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; and made vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The appeal site has been the subject of a previous appeal¹ for a single-storey dwelling. This previous appeal was dismissed on the grounds that it would harm the living conditions of neighbouring occupiers. However, it was found that the effect of the proposal on the character and appearance of the area would not be harmful.
5. The Council's officers recommended approval of the amended scheme which was not accepted by Council Members. The decision is one which is a matter of judgement. Members took the view that the proposal would harm the character and appearance of the area stating that the proposal would have a significantly adverse impact on the spacious and sylvan character of the area. They also found harm to the living conditions of nearby neighbours.

¹ APP/Y3940/W/19/3238622

6. While the Members are not duty bound to follow the advice of their professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
7. There are limited differences between the previous appeal and the scheme that is the subject of this appeal. The proposed house occupies a similar position, albeit slightly smaller. There is little difference in the time between these two schemes, with the first application being made on 10 June 2019 and the second, the subject of this appeal, being made on 21 July 2020. No evidence has been put to me that the character of the area has materially changed since that earlier scheme.
8. The Inspector for that earlier scheme found no harm to the character and appearance of the area. It will be seen from my decision that I have agreed with the previous Inspector's findings in regard to the proposals impact on the spacious and sylvan character of the area, finding no harm in this regard. The Council has not set out its reasons for disagreeing with the previous Inspector nor provided evidence to substantiate this reason for refusal. I find this amounts to unreasonable behaviour.
9. During the appeal a revised National Planning Policy Framework (the Framework) was published. The courts have confirmed that Inspectors need to make their decisions on the basis of the development plan and national policy which are in place at the time of their decision. In this changed national policy context, I found additional harm to character and appearance.
10. However, at the time the Council made its decision, the revised Framework was not in place. There was no change in policy context to lead to a different conclusion to that found by the previous Inspector on character and appearance. This does not therefore justify the stance taken by the Council at that time.
11. The second reason for refusal related to the effect of the proposed development on the living conditions of neighbours. A key concern in the previous scheme had been that it had not been satisfactorily demonstrated that the harmful impacts arising from the proximity of the driveway to the neighbours could be mitigated.
12. In support of the appeal scheme, the applicants submitted a noise assessment which concluded that any noise impacts would be negligible. The Council's environmental health officer (EHO) advised that on the basis of this evidence she would not be able to support a recommendation for refusal on noise grounds. It will be seen from my decision that I have agreed with both the ENIA and the EHO's assessment.
13. Members did not accept either the findings of the ENIA or the EHO's assessment. Members were entitled to come to a different conclusion particularly as there is a degree of subjectivity in respect of the experience of noise. However, I can see little evidence that Members fully considered the reduced size of the scheme and the proposed mitigation nor that they fully justified their reasons as to why this did not overcome the previous Inspector's concerns.

14. Whilst the EHO raised a concern about the use of the Design Manual for Roads and Bridges guidance within the ENIA she also found that the rest of the report and figures indicated that vehicle movements would not have a significant adverse impact on residential amenity. This did not therefore diminish her advice that the scheme could not be resisted on noise grounds.
15. In view of the technical evidence relating to noise before Members, and the absence of any objective analysis in support of their conclusions, I consider this represents unreasonable behaviour by the Council.
16. The policy context has changed and I have concluded that the appeal should be dismissed. Nevertheless, I find that the Council's behaviour at the time it made its decision has prevented and delayed development which should clearly be permitted. This has led to the applicants being faced with the unnecessary expense of lodging the appeal.
17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

18. 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 Lovatt-Williams, 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.
19. 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 agreement as to the amount.

Rachael Pipkin

INSPECTOR