
Costs Decision

Site visit made on 14 September 2021

by J P Longmuir BA(Hons) DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2022

Costs application in relation to Appeal Ref: APP/C1760/W/21/3276031 Land east of Furzedown Road, King's Somborne, SO20 6QJ

- 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 Richard Wickins on behalf of Shorewood Homes and the Diocese of Winchester for a full award of costs against Test Valley Borough Council.
 - The appeal was against the refusal of planning permission for the erection of 18 dwellings with associated landscaping and parking (outline) with all matters reserved except access and layout and change of use of land to allotments with new access off Furzedown Road and erection of a storage building (detail).
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Decision

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

Reasons

2. The Planning Practice Guidance 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 applicants state that the Council gave no discernible weight to the benefits of the scheme. It is also suggested that the site was identified for possible development which was not taken into account and the scheme was recommended for approval by officers. The Council failed to consider the wider accessibility of the allotments and their decision is based on the views of the able-bodied section of the community. The Council introduced new points which had not featured previously in their case, including terracing which could have been conditioned. In addition, the effectiveness of the boundary against prevailing weather could have been conditioned.
4. The Council respond that the UU was not signed at the point of determination, so the benefits were not secured. Their appeal statement at paragraph 5.15 does refer to the benefits and need for the legal agreement. The first reason for refusal does set out that the benefits do not outweigh the principle issue. The committee undertook an inspection visit and considered the comments from local residents, which they were entitled to do so. The accessibility of the allotments must reflect use by walking and not just from cars. The drawing showing the levels was only submitted on the afternoon of the planning committee day and the use of terracing may well be an engineering operation which would be beyond a condition. Hedging would not be sufficient for shielding from the wind due to the height of the allotment site.

5. In the main decision, the differing accessibility of the proposed allotments for pedestrians and vehicles had to be weighed up as well as the location compared to the existing site. These aspects were matters of judgement and open to the consideration of the decision maker.
6. Whilst hedge planting could have been conditioned, this is normally as an aesthetic matter. Here it was dealing with a wind shelter and bearing in mind the exposed nature, the implications were uncertain and required a detailed concept. Moreover, the new planting would take time to grow into a shelter.
7. The topography of the replacement allotments was a consideration of the suitability of the replacement facilities and other aspects contributed to the refusal of the planning application. The decision notice does not make reference to it, but I note the comment of a late submission of levels. Whilst terracing may well have been a way forward, the extent of it was unclear and too vague to condition.
8. The benefits were clearly explained in the case officer's report and the Council's committee had the chance to consider them. Moreover, the latter section of the pertinent reason for refusal does comment that the Council recognises the benefits of the proposal, including the delivery of open market and affordable housing.
9. The Council's committee inspected the two sites so they could consider the implications from an informed perspective. The comments from local residents included the detailed points from allotment holders on their particular operational needs. The Council had a duty to consider all comments up to the point of determination.
10. The concerns from the most effected residents were very pertinent and the need to protect their living standards was important. The proposal did not provide clear measures to remedy.

Conclusion

11. For the above reasons I conclude that the Council has not acted unreasonably, and that the applicant has not been put to wasted time and expense in pursuing the appeal. Therefore, an award of costs as described in the Planning Practice Guidance is not justified.

John Longmuir

INSPECTOR