

Costs Decision

Site visit made on 9 November 2021

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 February 2022

Costs application in relation to Appeal Ref: APP/R3325/W/21/3275984 18 Abbey Street, Crewkerne, Somerset TA18 7HY

- 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 First Court Accommodation for a full award of costs against South Somerset District Council.
 - The appeal was against the refusal of planning permission for 2 flats replacing vacant rear extension.
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Decision

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

Reasons

2. Planning Practice Guidance 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 appellant states that concerns which were not referred to in the previous inspector's decision¹ were introduced by the Council. However, in the case of this appeal the orientation of the proposal, including the position of windows and parking spaces differs from the previous scheme. This led to the Council coming to a different view on the proposal's effect on future living conditions. Those impacts were clearly outlined in the officer's report and as such the Council have not been unreasonable in this regard.
4. It is also argued that the Council has been inconsistent in its assessment of the effect on future living conditions and housing land supply on the basis that it allowed the conversion of flats to proceed nearby. Yet, the appellant has not provided any clear evidence on the similarities between the schemes, therefore I cannot assess whether unreasonable behaviour has occurred. Nonetheless I have determined this appeal on its individual merits.
5. The Council, according to the appellant has failed to justify its claim that the living conditions of neighbours would be harmed. My reading of the Council's case and the position of the proposed flats to the parking areas is that the harm would be incurred upon the living conditions of future residents, not existing occupiers.
6. In terms of heritage assets, the appellant states that the Council has not substantiated the concern that the setting of nearby listed buildings would be harmed by the proposal. Yet, the Council have not specifically referred to setting impacts on listed buildings in their case. The officer's report and statement of case

¹ APP/R3325/W/17/3192686, decision issued 1 June 2018

focuses on the effect on the building's character and the consequential harm to the CA.

7. There is the suggestion that the Council had prolonged the determination of the application pending the achievement of a 5-year housing land supply (5HSL). I have limited information to support that suggestion and in any case at the time of my decision there was no 5HSL in place. Accordingly, my decision has been determined in accordance with Paragraph 11 of the National Planning Policy Framework (Framework).
8. The Council's statement has apparently not given sufficient certainty to the appellant's use of matching materials. This is a relatively minor point that is briefly covered by the appellant and has not in my view resulted in any unnecessary expense being incurred.
9. Reference has been made to the content of the Council's acknowledgement letter. However, the acceptability or otherwise of the procedures outlined would be a separate matter for the appellant to pursue with the Council.
10. According to the appellant, during the determination stage the Council engaged in positive communication with the applicant that did not allude to the application being refused. There is limited information of those exchanges, therefore I am unable to comment on whether unreasonable behaviour has taken place.
11. The Council did not request a Heritage Statement from the applicant during the time the scheme was being determined. However, I have no details of whether this was a necessary requirement for applications affecting a heritage asset. I therefore have no firm basis to conclude that the failure to request this information amounted to unreasonable behaviour on the part of the Council.
12. The Council's development plan (Policy EQ3) requires the effect of a development on local distinctiveness to be considered. The appellant considers that this was not demonstrated by the Council in refusing the application. However, the Council has adequately reasoned that the scale and location of the development would harm the character of the building and CA. These effects would fail to accord with other aspects of the policy; therefore, the Council has not been unreasonable in its approach.
13. Before refusing the application, the Council did not request details from the applicant to address the identified impact of increased phosphates on the Somerset Levels Moors Special Protection Area (SPA) and Ramsar Site. The Council does not consider it was unreasonable as details of the status of the SPA and Ramsar Sites were in the public domain. However, they have not provided any details of where the applicant could have obtained such information. Nonetheless, the appellant had the opportunity to provide further details on this matter with the appeal, while the information submitted, would in my view, not have amounted to any unnecessary expense on the applicant's part.
14. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

RE Jones

INSPECTOR