

Costs Decision

Site visit made on 21 December 2021

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2022

Costs application in relation to Appeal Ref: APP/Y3940/W/21/3280036 Land adjacent to Waitrose, Malmesbury by-pass, Malmesbury SN16 9FS

- 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 Ms Orysa Lyvchanyn for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of the Council to grant subject to conditions planning permission for the construction of gabion wall and infilling.
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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 applicant has expressed frustration at the length of time the Council took to make its decision and has behaved unreasonably as a result. In response, the Council have referred to delays resulting from obtaining further information and waiting for responses from the appellant's agent. Although there is clear dispute between the parties on this matter, I have not been presented with any clear timeline of when information was requested and what specifically led to the delay in the Council making its decision. Whilst I appreciate the applicant's frustration, in the absence of any compelling information, I am not able to conclude with any certainty whether the Council acted unreasonably in failing to adhere to accepted timescales for issuing decisions.
4. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. In this case the minutes from the Planning Committee indicate that members were given details of the proposal's location, and scale, and from this were able to provide their own material planning grounds as to its likely effect on the area's character with due reference to planning policies.
5. Accordingly, I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme and therefore the appeal could not have been avoided. I have found that the Council had reasonable concerns about the impact of the proposed development which justified its decision. The

appellant had to address those concerns and the evidence of third parties in any event.

6. The applicant is concerned that the Council did not deal with the proposal as permitted development. However, on this matter it is noted that they determined an application for a Lawful Development Certificate for a comparable proposal to the appeal scheme and determined that it did not fall under PD¹, and would consequently require permission. Given that background the Council did not act unreasonably in determining this scheme. The applicant may wish to challenge that decision separately.
7. The Officer who recommended approval of the proposal was placed in the invidious position of having to defend the decision of the Council. But there is no evidence to suggest that the case presented in the appeal was anything other than factual and based on the material planning concerns outlined by members of the Planning Committee. Accordingly, this action does not amount to unreasonable behaviour that has led to the applicant incurring additional expense in the appeal process.
8. Similarly, I have found limited evidence to suggest that the matter of the development description has amounted to any unnecessary expense, particularly given the initial confirmation from the applicant's agent regarding the use of the land.
9. An archaeological assessment was required given the site's proximity to potential historical remains. This was a reasonable request on the part of the Council and a material consideration in the assessment of the scheme. It is acknowledged that the site was also used for waste deposits in relation to the adjacent bypass, but this does not in my view provide sufficient reason to preclude an archaeological assessment.
10. 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

¹ PL/2021/0455, Lawful Development Certificate refused 28th July 2021