



Costs Decision

Site visit made on 11 January 2022

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 March 2022

Costs application in relation to Appeal Ref: APP/J3720/W/21/3281331 Preston Bagot End, Old Road, Preston Bagot, B95 5EF

- 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 J Danter for a full award of costs against Stratford-on-Avon District Council.
 - The appeal was against the refusal of planning permission for the demolition of existing dwelling and outbuildings, removal of storage container, erection of replacement dwelling, garage building and all associated works.
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Decision

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

Reasons

2. The 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 or wasted expense in the appeal process.
3. The applicant contends that the appeal should have been avoided as planning permission should have been granted. In particular it is considered that the Council's first refusal reason was based on vague and generalised assertions which did not refute or acknowledge the submitted Landscape Visual Assessment, and that secondly their consideration regarding the fall-back position was not evidence based and contrary to established case law.
4. The planning application was supported by a Landscape and Visual Appraisal (LVA) undertaken by JB Landscape Associates. This appraisal considered in some detail the proposals effects on landscape character and visual amenity as well as the relevant development plan policies. It concluded that the development would not be harmful to the landscape character and visual amenity of the surrounding area.
5. Notwithstanding the contents and conclusion of the above appraisal, the Council is not duty bound to accept its findings. In this instance the Council has come to the opposite conclusion, and whilst I acknowledge that there was not a specific rebuttal of the submitted LVA the impacts of the development are a matter of planning judgment. The Council exercised their judgment and concluded that the development was contrary to the relevant development plan

policies. Although I have reached a different view, I do not consider that this amounts to unreasonable behaviour on behalf of the Council.

6. As part of their appeal the applicant's put forward a fall-back position in the form of a single storey side extension, single storey rear extension, new porch, and detached outbuilding, all of which could be undertaken without needing planning permission. This was confirmed through the granting of a lawful development certificate (Ref 20/01152/LDP) on the 25 September 2020.
7. The applicant's claim is based around the Council's statement that it was 'not convinced that it is a realistic probability that a refusal of this proposal would precipitate the implementation of the PD option', and that this was an assertion based on little or no evidence.
8. In assessing whether or not a fall-back position is a material consideration, as set out in *Gambone v SSCLG* a two-step approach is necessary. The first step is to ask whether there is a greater than theoretical possibility that the development might take place. The second step is in the event that there is a greater than theoretical possibility, what weight should be ascribed.
9. The Council concluded that the development was unlikely to take place. Whilst I do not fully agree with that view, I do not consider that the Council acted unreasonably as a clear explanation was provided. In any event, as may be seen from the accompanying appeal I concur with the Council's view that the fall-back position would be less harmful than the appeal proposal. Therefore, the likelihood is that an appeal would have been lodged in any case.
10. Given my findings above I consider that the applicant's time and expense in defending the appeal were a necessary part of the process. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated. As a result, I find that the cost application should be refused.

David Jones

INSPECTOR