
Costs Decision

Site visit made on 28 February 2022

by John Wilde CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 29 March 2022

Costs application in relation to Appeal Ref: APP/V3310/W/21/3285248 Brue House, 84 Berrow Road, Burnham-on-Sea, Somerset TA8 2HJ

- 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 I Straddling for a full award of costs against Sedgemoor District Council.
 - The appeal was against the refusal of planning permission for the construction of two ground floor flats in association with existing flats and revised parking for the existing and proposed flats.
-

Decision

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

Reasons

2. I have considered this application for costs in the light of the Government's Planning Practice Guidance (PPG). This advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. It makes clear that a local planning authority are required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour¹.
3. In this case the appellant considers that the Council have acted unreasonably on several counts, and I will deal with each in turn.
4. Firstly, the proposed scheme was refused on the grounds of the impact on the living conditions of occupiers of both the proposed flats and the existing flats. The relevant reason for refusal being: *by virtue of the close proximity of the proposed dwellings with the boundary to the south, the outlook for the future residents of the dwellings would be greatly restricted which would harmfully detract from the living conditions of those occupants. Furthermore by virtue of the close proximity of the proposed dwellings with the existing flats, there would be an adverse impact on the occupants of the southernmost ground floor flat in terms of loss of outlook and loss of light.*
5. However, a similar scheme, in terms of layout, had recently been refused by the Council (11/19/00030) with the first reason for refusal being: *the proposed*

¹ Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306

demolition of existing garages and the erection of 2 flats and parking by virtue of its design, mass, bulk and layout will have an adverse impact on the existing block of flats detracting from the character of this property in particular and the street scene in general and is visually intrusive.

6. It seems clear to me that the reason for refusal relating to 11/19/00030 is specifically aimed at the character and appearance of the proposal. Nowhere is there mention of amenity or the living conditions of future or current occupiers. This is in stark contrast to the reason for refusal for the proposal that is the subject of the appeal. This mentions outlook and privacy, neither of which were previously mentioned.
7. The PPG makes clear that Local Planning Authorities are at risk of an award of costs against them if they fail to determine similar cases in a consistent manner. That is the case here, and notwithstanding that I have agreed with the Council's assessment on the issue of living conditions, the fact that they have introduced a different reason for refusal for a very similar proposal indicates inconsistency in their approach. It follows that they have acted unreasonably in this matter.
8. Secondly, the appellant considers that the Council have ignored the information provided with their application in respect of the swept path analysis. However, the Planning Officer comes to a conclusion on this issue by showing that the overall parking provision would be less than that required by the Somerset Parking Strategy. Whilst I acknowledge that the tracking plans are not referred to in the Planning Officer's report, even if they had been taken into account, the overall parking provision would still have been deficient, and therefore on the balance of probability the outcome would have been the same. Therefore I am not persuaded that the absence of their mention in the report was determinative in the decision being arrived at. It follows that on this matter the Council have not acted unreasonably.

Conclusion

9. I have found that in respect of the issue of parking the Council have not acted unreasonably. However, with regard to the issue of living conditions, I have found that the Council have acted unreasonably in that they have not been consistent in their treatment of similar applications.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

11. 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 Sedgemoor District Council shall pay to Mr I Straddling the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the Authority's first reason for refusal relating to living conditions, such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to Sedgemoor District 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.

John Wilde

INSPECTOR