
Costs Decision

Site visit made on 4 April 2022

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th April 2022

Costs application in relation to Appeal Ref: APP/F0114/W/21/3283661 Waterworks Cottage, Charlcombe Way, Fairfield Park, Bath BA1 6JZ

- 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 & Mrs Jeremy & Sarah Flavell for a full award of costs against Bath & North East Somerset Council.
 - The appeal was against the refusal of planning permission for extension and alteration to existing Cottage and creation of two detached dwellings.
-

Decision

1. The application for an 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 or wasted expense in the appeal process.
3. The applicants have alleged that the Council behaved unreasonably by preventing or delaying development which should clearly have been permitted, by failing to produce evidence to substantiate its refusal reasons, by using vague, generalised or inaccurate assertions about a proposal's impact unsupported by objective analysis, and by not reviewing its case promptly following the lodging of the appeal.
4. As will be seen from my decision upon the planning appeal that is the subject of this application, I have identified that harm would be caused to the character and appearance of the area. As such, I cannot find that the Council acted unreasonably when imposing its first reason for refusing planning permission. Indeed, development that should clearly have been permitted was not prevented or delayed.
5. With respect to the Council's second refusal reason, it is important to note that, whilst the site falls within the designated urban extent of Bath, it has a connection in both character and visual terms with the expansive rural landscape that it sits adjacent to. Indeed, arguments put forward related to the site offering a gentle transition between urban and rural landforms have been accepted.
6. As such, especially when factoring in the sensitivities/designations that apply to the site's adjoining lands, it was not unreasonable for the Council to find that the scheme would have an adverse effect upon the landscape setting of the

locality. This is notwithstanding my related findings upon the planning appeal, or the position taken by the Council's specialist Landscape Officer. Moreover, the supporting landscape evidence¹ acknowledges contextual landscape effects, albeit minimal, and at least some scope for visibility when experienced from a range of locations.

7. As regards the third reason for refusal, which relates to biological diversity loss, the Council has conceded that it could not be sustained. This change in stance was not linked to the submission at appeal stage of additional supporting technical information. It is thus apparent that assertions were made about the scheme's impact that ultimately could not be substantiated. On this basis, the Council acted unreasonably when resolving to impose its third refusal reason. Furthermore, the evidence before me indicates that the Council did not seek to review its case at the earliest available opportunity once the appeal was lodged. It instead moved to withdraw its third refusal reason quite some time later, when its Statement of Case was submitted.
8. Nevertheless, for costs to be awarded, unnecessary expense must be clearly identifiable. The appellants did not commission further detailed reports (or similar) at appeal stage and have instead principally sought to refer, via their Written Statement, to the findings of documents² submitted in support of the original planning application. Moreover, a limited proportion of the applicants' Written Statement is dedicated to addressing biodiversity matters. As such, substantive additional wasted expense at appeal stage has not been clearly demonstrated.
9. For the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. Thus, having had regard to all matters raised, an award of costs is not justified.

Andrew Smith

INSPECTOR

¹ Landscape and Visual Appraisal for new dwellings at Waterworks Cottage, Charlcombe Way, Bath (October 2020); Supplementary Landscape and Visual Appraisal relating to Waterworks Cottage, Charlcombe Way, Bath (January 2021)

² including an Updated Ecological Mitigation and Enhancement Plan (January 2021) and File Note - Biodiversity Net Gain (March 2021)