
Costs Decision

Site visit made on 1 September 2022

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd September 2022

Costs application in relation to Appeal Ref: APP/L1765/W/22/3291091 The Reservoir, Abbotstone Road, Fobdown, Hampshire, SO24 9TD

- 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 Martin Pratt for a full award of costs against Winchester City Council.
 - The appeal was against the refusal of planning permission for a development described as 'Change of use of land from agricultural to Class C3 (Dwellinghouse). Development comprising the reshaping of the reservoir to provide for the construction of a floating five-bedroom dwellinghouse, with part subterranean garage, made pursuant to the provisions of paragraph 79(e) of the National Planning Policy Framework (NPPF) (2019). To include: the formation of a new vehicular access from Abbotstone Road, the laying of a driveway and forecourt, engineering works for the purpose of landscaping, and the installation of two floating solar islands'.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (PPG) states that an award of costs may only be made 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 committee report gives the strong impression that a proposed building should not be considered isolated if it is near other buildings. This is a misapplication of the term 'isolated' in Paragraph 80 of the National Planning Policy Framework when applying the relevant legal judgments¹.
4. However, under the 'Principle of Development' section of the committee report, the authors do address the *Bramshill* judgement and explain, correctly, that it is for the decision maker to apply their planning judgment to the question of what constitutes a settlement and whether a proposal would be isolated. The committee report sets out a view that the sporadic development along Abbotstone Road leading up to Abbotstone is a settlement. I do not share this view for the reasons given in my decision, but the Officers, and subsequently the Council, were entitled to reach it.

¹ In *Braintree DC v Secretary of State for Communities and Local Government* 2018 WL 01513032 and *Bramshill Ltd v Secretary of State for Housing, Communities And Local Government & Ors* [2021] EWCA Civ 320

5. In any event, the committee report went on to consider in some detail in a well-reasoned and rational way why, in the Officers' opinion, the proposal would not be of exceptional quality when applying the tests in Paragraph 80 of the Framework. This is not a straightforward matter. The analysis was reasonable and coherent and made some sound points, especially relating to the impacts of the proposed access and garage. As a result, the committee report covered this matter. All the indications are that the application would have been refused even if the Council took the view the proposal was isolated.
6. Upon finding that the proposal would not be of exceptional quality, it is entirely unsurprising that the conflict with Policy MTRA4 of the Local Plan², which all parties agree would occur, was the decisive matter in the Council's assessment. After all, a proposal should be determined in accordance with the development plan unless material considerations indicate otherwise. As the proposal would be at odds with the development plan, it would be incorrect to suggest the proposal should clearly have been approved. As a result, the appellant has not been put to unnecessary expense in submitting their appeal.
7. The appellant has taken issue with the conduct of the planning committee Chair, but this is principally a matter for the Council. Notwithstanding this, the Chair based their decision on the committee report, which I have already explained included a comprehensive assessment outlining why the proposal was not considered to be exceptional. The Chair was entitled to share this view and the evidence before me, including minutes and a transcript of the meeting, do not demonstrate a closed mind or biased approach. In fact, some committee members voted in favour of the proposal.
8. It is difficult to understand why the Council did not reconsult the Design Review Panel (DRP) given the nature of the application. Moreover, I accept that the comments outlined in the committee report attributed to the Council's Urban Design and Landscape Officers could have been expressed more clearly. For example, it's not overtly apparent that they raised no objections. The applicants' frustrations are well placed on account of this. That said, the Council is not required to consult a DRP, and the indications are that the application would have been refused even if the comments from the Urban Design and Landscape Officers had been reported in full.
9. Officers had offered advice at a pre application stage indicating that the proposal would not be supported. They were entitled to do so, and the advice offered is not a formal determination of the merits of the scheme. The detailed assessment in the committee report sets out why the Council did not support the proposal. It is therefore inaccurate to suggest the Council's decision was unjustified and unsubstantiated and the assessment approached with a closed mind.
10. In conclusion, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not occurred. The application for costs is therefore refused.

Graham Chamberlain
INSPECTOR

² Winchester District Local Plan Part 1 – Joint Core Strategy