
Costs Decision

Site visit made on 18 October 2022

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 February 2023

Costs application in relation to Appeal Ref: APP/W3330/W/22/3294639 Birch Cottage, Halse Road, Halse, Taunton TA4 3AQ

- 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 P Fineberg for a full award of costs against Somerset West and Taunton Council.
 - The appeal was against the refusal of planning permission for a replacement of a single dwelling and garage with 1 No detached dwelling with detached garage and associated works and extension of residential curtilage without complying with a condition attached to planning permission Ref 18/20/0014, dated 26 October 2020.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, costs may 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 Guidance advises that awards may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. All parties are expected to behave reasonably throughout the planning process, and costs can only be awarded in relation to unnecessary or wasted expense at the appeal.
4. The application for an award of costs has been made by the appellant in writing and will not be repeated here in any detail. The appellant considers the Council failed to substantiate or objectively assess the proposal, incorrectly cited policies, and ignored the advice of the case officer and consultees. The Council is considered to have behaved unreasonably, thereby necessitating unnecessary and wasted expense. The Council has not submitted a response to the costs application.
5. For the reasons given in my decision I have found substantive reasons for allowing the appeal. For the appeal, the Council provided brief explanations of why the scheme was refused. With regard to the impact of the development on the character and appearance of the conservation

- area, it was explained that the relocation of the house and garage, along with the timber gable of the latter would be incongruous in the street scene.
6. The application was also refused because the development would result in an unacceptable loss of privacy to the occupiers of neighbouring properties. The reason for refusal makes it clear that the proposal would result in overlooking of the adjacent properties to the detriment of residential amenity by way of loss of privacy. At the appeal stage, the Council provided a brief explanation to substantiate this reason for refusal, explaining that the as built location of the development would result in perceived overlooking to the detriment of the occupiers of the neighbouring property. This brief statement provides some, albeit limited evidence to substantiate the reason for refusal, but in doing so amends the nature of the harm from actual harm to perceived harm.
 7. Furthermore, the Council has referred to an incorrect policy reference within the reason for refusal, citing conflict with Policy DM1 (d) and (e) of the Taunton Deane Core Strategy (2012). The former point refers specifically to character and appearance matters, and such a reference was remiss of the Council.
 8. The Council is not bound to accept the recommendations of its officers, but if their technical and professional advice is not followed then reasonable grounds for taking a contrary decision need to be provided supported by relevant evidence. In this instance the Council has not substantiated the reason for refusal with regard to the impact of the scheme on neighbouring residents. A vague, generalised and inaccurate assertion has been provided about the proposal's impact which has been unsupported by objective analysis.
 9. The consideration of planning applications and appeals involves matters of judgement that are at times finely balanced. In this case the Council has substantiated the harm resulting from the proposal with regard to matters of character and appearance, but have failed to provide a robust case for justifying how the scheme would be significantly harmful to the living conditions of neighbouring residents.
 10. I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense as described in the Guidance has been demonstrated and 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 Somerset West and Taunton Council shall pay to Mr P Fineberg, the costs of the appeal proceedings described in the heading of this decision with regard to the matter of overlooking of

adjacent properties; such costs to be assessed in the Senior Courts Office if not agreed.

12. The appellant is now invited to submit to Somerset West and Taunton 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.

J J Evans

INSPECTOR