
Costs Decisions

Site visit made on 7 February 2023

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 22 February 2023

Costs application A in relation to Appeal Ref: APP/F0114/W/22/3302121 Burnett Manor, Watery Lane, Burnett, Keynsham, Somerset, BS31 2TF

- 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 David Oliver for a full award of costs against Bath and North East Somerset Council.
 - The appeal was against the refusal of planning permission for installation of solar PV panels and ground source heat pump pipe work to eastern paddock to provide renewable energy source for manor house and connecting to plant room of listed building.
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Costs application B in relation to Appeal Ref: APP/F0114/Y/22/3302122 Burnett Manor, Watery Lane, Burnett, Keynsham, Somerset, BS31 2TF

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr and Mrs David Oliver for a full award of costs against Bath and North East Somerset Council.
 - The appeal was against the refusal of listed building consent for installation of pipe work to service ground source heat pump in lower ground floor plant room and forming of 2no 100mm diameter holes below ground in external wall.
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Decision A

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

Decision B

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

Preliminary Matter

3. The applications have been submitted together as they relate to the same proposal. However, I have separated out the matters in my reasoning to those that are relevant to the application for listed building consent and those that relate to the planning application.

Reasons – both appeals

4. The Planning Practice Guidance¹ (the PPG) advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has

¹ Planning Practice Guidance Paragraph 030 Reference ID: 16-030-20140306

behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense.

5. With reference to the PPG², the applicants submit that the Council prevented or delayed development that should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; that it failed to produce evidence to substantiate each reason for refusal on appeal; and that it made vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis.

Reasons – application A

6. The applicants submit that the Council's finding of harm to the setting of the Manor and Church are contrary to the submitted evidence and is a finding that is inaccurate and unsupported by objective analysis. There is nothing before me to show that the Council has identified how the setting of these heritage assets would be impacted by the proposal, and how such an impact would harm the significance of either building.
7. Furthermore, the Council concludes that the benefit of the proposal would be an insufficient public benefit that would not outweigh the harm identified, with reference to Paragraph 202 of the National Planning Policy Framework (the Framework). Whilst this could be the outcome of the undertaking of the balancing exercise required by Paragraph 202 of the Framework, there is nothing before me to suggest that the considerable environmental benefit of the proposal was given an appropriate level of weight.
8. Even without a supply of surplus energy that could be fed back to the grid, the significant reduction in carbon output is an environmental benefit that is in the wider public interest. As such I cannot be satisfied that the public benefit balance was properly carried out by the Council, and if it had whether the Council would have reached a different conclusion regarding heritage harm.
9. Similarly, it is not clear why the Council did not find that very special circumstances existed on the basis that the energy generated would mostly meet the energy requirements of the dwelling. The substantial improvement to the way that energy is provided to the large dwelling significantly lessens its demand on fossil fuels and reduces its carbon output which is a benefit that should be given considerable weight, particularly in light of the strong national policy support for the development of renewable energy sources and the Council's own declared climate emergency. It is not clear from the submissions what weight was attributed to the environmental benefits of the proposal to consider whether they would amount to the very special circumstances necessary to justify the development.
10. For these reasons I find that the Council's conclusions regarding heritage harm, the way that it handled the public benefit balance, and its consideration of whether the benefits of the proposal would amount to very special circumstances constitute unreasonable behaviour.
11. The Council's second refusal reason states that appropriate engagement with the community at pre-application stage has not been demonstrated. This would appear to be a requirement of Policy SCR3 of the Bath and North East

² Planning Practice Guidance Paragraph 049 Reference ID: 16-049-20140306

Somerset Local Plan 2011-2029 Core Strategy & Placemaking Plan District-wide Strategy and Policies.

12. As I found in my appeal decision, this Policy relates primarily to solar farms or solar fields and is therefore not wholly relevant to the more modest scale of the appeal proposal. On this basis and taking into account the relatively modest scale of the proposal, I am satisfied that additional engagement with the community at pre-application stage was not necessary. Additionally, the Policy is worded such that proposals should achieve as many of the factors set out in the Policy as possible. It is therefore not essential that each criterion is satisfied before a proposal for a ground mounted solar array can be supported. I therefore find the Council's inclusion of this matter within its refusal reason to constitute unreasonable behaviour.
13. The Council's third refusal reason refers to harm to the outlook enjoyed by the occupants of the adjacent dwelling, Whitson Lodge. Whilst I appreciate the applicants' concerns regarding the difference between an impact on outlook and a view, the Council's reasoning as set out in its appeal statement is sound, citing it as visually obtrusive in the context of an otherwise relatively isolated dwelling. Therefore, whilst I reached a different conclusion in my decision, I am satisfied that this reason for refusal is substantiated and should not be considered to constitute unreasonable behaviour on the part of the Council.
14. I now need to consider whether the unreasonable behaviour I have identified has resulted in unnecessary or wasted expense on the part of the applicant. The applicants have spent time and effort addressing the council's first and second refusal reasons which, based on my conclusions above, constitutes an unnecessary and wasted expense. This does not however relate to the whole appeal as I have found that the Council did not behave unreasonably in relation to its third refusal reason. Therefore, a partial award of costs is justified for application A.

Reasons – application B

15. The Council's refusal reason for the application for listed building consent only refers to those elements of the scheme that require planning permission. The elements of the proposal that constitute works to the listed building are set out in the description above. There is nothing before me to suggest that the Council considers these elements of the proposal to harm the significance of the listed building.
16. I therefore find that the Council acted unreasonably by refusing listed building consent for the proposal for reasons that relate only to the planning application. The applicants have spent time and effort addressing this matter in their appeal submissions. Thus, the Council's unreasonable behaviour has resulted in unnecessary and wasted expense on the part of the applicants and an award of costs is justified for application B.

Costs Order – application A

17. 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 Bath & North East Somerset Council shall pay to Mr and Mrs David Oliver, the costs of the appeal proceedings described in the heading of this decision limited to

those costs incurred in addressing the Council's first and second refusal reason; such costs to be assessed in the Senior Courts Costs Office if not agreed.

18. The applicant is now invited to submit to Bath & North East Somerset 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.

Costs Order – application B

19. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Bath & North East Somerset Council shall pay to Mr and Mrs David Oliver, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
20. The applicant is now invited to submit to Bath & North East Somerset 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.

A Tucker

INSPECTOR