



Costs Decision

Site visit made on 21 December 2022

by Lewis Condé Msc, Bsc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd February 2023.

Costs application in relation to APP/W0340/W/22/3302257

Lake House, Hayward Green Farm, West Woodhay, Newbury RG20 0BJ

- 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 C Brown, Lucy Developments Ltd, against West Berkshire District Council.
 - The appeal was against the non-determination of an application under Section 73 of the Town and Country Planning Act 1990 (as amended) for '*Demolition of garden store. External alterations to the Eastern Pavilion including the provision of rooflights (Retrospective). Erection of new Western Pavilion to provide home office facilities at ground level, guest accommodation at first floor and a basement level garage*' without complying with a condition attached to a previously granted planning permission Ref 18/01441/HOUSE.
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Decision

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

Background

2. Planning Policy Guidance (PPG) 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 expense in the appeal process.
3. The PPG sets out examples of behaviours relating to procedural and/or substantive matters, whereby the award of costs may be appropriate. Having regard to the advice of the PPG, the applicant submits that the Council has acted unreasonably on three grounds.
4. The first ground for costs is made on the basis that the Council has acted unreasonably by preventing development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
5. The second ground for costs is made on the basis that the Council has failed to produce evidence to substantiate each reason for refusal in respect of both appeals.
6. The third ground for costs is made on the basis that the Council has made vague, generalised and inaccurate assertions about the impact of the respective proposals, which is unsupported by any objective analysis.

Reasons

7. The appeal against non-determination was made several months after the was initially due to be determined, including beyond an agreed extension of time. I understand that the applicant provided further evidence several month after the initial application submission to address case officer/consultee concerns, such a requirement is not unusual. However, the Council also accepts that there have been delays in processing the application on their part due to limited resources and very high workloads. I am mindful that numerous LPAs are currently somewhat stretched thin and facing similar circumstances. As such, whilst significant delays may be frustrating for all parties involved, it is not necessarily symptomatic of unreasonable behaviour on the Council's part.
8. The Council no longer had jurisdiction to determine the application following the applicant's appeal against non-determination. Nevertheless, the case was still presented to planning committee¹ to seek a recommendation as to the scope of representations that should be made to the appeal. Indeed, the Council Officer continued to produce a detailed report that recommended that planning permission should have been granted, subject to conditions. Despite this, Council Members instead resolved to contest the appeal citing four reasons why they would have refused permission had the application remained to be determined by the planning committee. On this basis, an appeal would have been necessary even if the application had been determined by the LPA.
9. I have noted the recommendation of the Council Officer. However, Council Members in this case were entitled not to accept the professional advice of Officers so long as a case could be made for the contrary view.
10. In respect of the first suggested reason for refusal, the issue remains a subjective matter, despite the Council Officer's view and the findings of the previous Inspector. I appreciate that the increased size of the basement would not be visible in the context of the AONB. Nevertheless, I consider that Council Members have adequately justified their position through consideration of whether the proposal remained a subservient form of development and the potential intensified use of the site.
11. In terms of the second suggested reason for refusal, it will be noted from my main decision that there were limitations to the baseline position outlined within the applicant's Light Impact Assessment (LIA). Council Members were therefore reasonable to question the validity of its findings. Likewise, they were entitled to use the LIA with some caution to aid their own judgement on the potential impacts of light spill.
12. The applicant contends that the Council's third reason for refusal fails to take account of expert advice received from the Local Lead Flood Authority (LLFA). The planning committee report illustrates that the LLFA had previously expressed concerns regarding the proposal including what effect the proposed drainage system might have upstream outside of the site boundary. The applicant did submit further information, including a revised drainage strategy to address many of the areas of contention, such that the LLFA were content

¹ I understand that had the Council determined the application it would have needed to be determined by the planning committee. This was due to the number of objections the application received and the Council's scheme of delegation.

that outstanding drainage matters could be dealt with via a condition on the grant of a permission.

13. However, the LLFA's response (as outlined in the Committee Report) still illustrated that there remained uncertainty regarding the potential effects of the proposal on upstream events. The LLFA further acknowledged that it would be extremely difficult to prove the effect of the proposal on groundwater outside the site, but still maintained that it would have been beneficial if the applicant had specifically addressed this issue in detail. In the absence of such detail being provided by the applicant, and because the LLFA did not entirely rule out adverse impacts outside the site, I consider that Council Members were not unreasonable in deeming they had insufficient information in respect of impacts on drainage.
14. Turning to the suggested reason for refusal on biodiversity grounds, the extent of works proposed under the application exceeds that of the original permission (ref: 18/01441/HOUSE). Furthermore, no updated Preliminary Ecology Assessment or ecology survey work was submitted with the application, despite a fair passage of time since the original permission. I appreciate that no further survey work may have been expressly requested by the Council. However, in the absence of updated information and no specific comments from the Council's ecology officer it was not unreasonable for Committee Members to deem the proposal may adversely impact on biodiversity.
15. Overall, I have reached alternative views to the Council on the main issues of the appeal. Nonetheless, I consider that the Council has adequately substantiated the reasons why it would have refused planning permission. Additionally, the indicative reasons for refusal as set out in draft committee minutes and the LPA's statement of case are complete, precise, specific, and relevant to the application. They also clearly state the policies of the development plan that Members felt the proposal would conflict with.
16. As previously indicated, an appeal would have been necessary even if the application had been determined by the LPA.

Conclusion

17. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Accordingly, an award of costs is refused.

Lewis Condé

INSPECTOR