



Costs Decision

Site visit made on 12 April 2023

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 April 2023

Costs application in relation to Appeal Ref: APP/U3935/D/22/3312754 154 Whitworth Road, Swindon SN25 3BJ

- 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 Miss D Kader for a full award of costs against Swindon Borough Council.
 - The appeal was against the refusal of planning permission for the erection of a balcony.
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Decision

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

Reasons

2. Planning Practice 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. In claiming the costs of the appeal, the applicant submits that the Council acted unreasonably in procedural and substantive terms. Procedurally, it is asserted that the Council was uncooperative as they failed to contact the applicant prior to refusing the planning application, thereby preventing further negotiations or revisions that could have avoided the need for the appeal. In substantive terms, the applicant considers that the Council ignored the planning history, and therefore, acted unreasonably in refusing the development on the grounds of character and appearance. They contend that on that basis the Council have failed to produce evidence to substantiate the reason for refusal.
4. PPG gives further advice as to when local planning authorities will be at risk of an award being made against them. The examples listed as unreasonable behaviour on procedural grounds include a lack of co-operation with the other party. Examples cited as unreasonable behaviour on a substantive basis refer to preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, and failing to produce evidence to substantiate the reason for refusal.
5. The reference in the PPG¹ to the lack of cooperation by local planning authorities is prefaced by the requirement relating to procedural matters at the appeal, for example by complying with the requirements and deadlines of the

¹ Paragraph :047 Reference ID: 16-047-20140306

- process. There is no evidence before me to suggest that the Council have not met the procedural requirements of the appeal in this case. Instead, the principal concern relates to behaviour during the planning application process.
6. The applicant states that certain matters were agreed with a planning officer prior to submission. However, as this was based on a telephone conversation, there is little conclusive record as to the extent or nature of such agreement. In my experience, it would be rare for a planning officer to give unqualified verbal support for a specific proposal in pre-planning application discussions. Furthermore, the applicant is advised by a planning agent who would no doubt be aware that such discussions are not binding upon a formal decision of the local planning authority.
 7. The applicant confirms she is open to continued discussions and negotiations with the Council in order to regularise the development that has already taken place. However, I am not aware that local planning authorities are under an obligation to contact planning applicants to discuss the outcome prior to making their formal decisions on planning applications. Therefore, such an approach would be at the discretion of the Council and needs to be balanced with making a timely decision. Hence, just because such a courtesy was requested, and not adhered to, does not amount to unreasonable behaviour by the Council.
 8. In addition, I have seen little evidence to demonstrate the assertion that it would have been 'extremely simple' to revise the proposed design to make it acceptable to the Council. It seems the Council informed the applicant that in their view there was no easy resolution. Hence, it is not clearly shown that there was an obvious solution whereby the appeal could have been easily avoided.
 9. The Council produced a delegated report which considered the proposal against development plan policies, national policy and other considerations. This articulated the Council's concerns, identified areas of conflict against a specific policy, and summarised these in the reason for refusal. It also referred to the previously dismissed appeal as relevant background. The assessment of visual impact mentions the description of the balcony by the previous Inspector as 'lightweight' but that the appeal scheme represents a material change. Therefore, the evidence does not show that the Council ignored the planning history, nor lacked substance, rather a reasoned assessment is given for the decision.
 10. I acknowledge that the applicant disagrees with the Council's assessment, but it does not necessarily follow that it was unreasonable. Moreover, whilst the planning history is relevant, it will be seen from my decision that the applicant inferred clear and positive advice was made by the previous Inspector for revisions, which a plain reading of the decision did not support.
 11. Therefore, I do not consider that unreasonable behaviour has been demonstrated within the meaning of the PPG on either procedural or substantive grounds. It follows that the applicant was not put to unnecessary or wasted expense in testing the Council's decision at appeal.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, the application for an award of costs is refused.

Helen O'Connor

Inspector