



Costs Decision

Site visit made on 18 July 2023

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2023

Costs application in relation to Appeal Ref: APP/J3720/D/22/3313701 Good Place Poolhead Lane, Tanworth-In-Arden, SOLIHULL B94 5EH

- 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 Adil Abrar for a full award of costs against Stratford-on-Avon District Council.
- The appeal was against the refusal of planning permission for the replacement of the existing conservatory with a smaller extension; construction of a timber-framed carport to front, and canopies and replacement balcony at rear; installation of external wall insulation and cladding to all external walls; alterations to windows, doors, dormers and rooflights.

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that 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 Appellant has claimed that the Council has made procedural and substantive errors in the planning application process. The Appellant asserts that the Council:
 - took 25 weeks to determine the Application and the Appellant gave no cause for determination to be delayed,
 - displayed unreasonable behaviour by determining the application, without giving the Appellant an opportunity to resolve the objection. The Council introduced a Green Belt objection late in the process, as an attempt to strengthen its decision, and
 - the Appellant presented the Council with evidence explaining why the proposed materials were not unsuitable, but this was disregarded. The Council made a subjective assessment of the proposed material rather than undertaking an objective test against adopted policy.
4. The Appellant suggests that the delay in securing planning permission has generated additional costs with respect to the costs of appealing, additional energy costs of heating an inefficient dwelling and rising construction costs.

Time scale

5. The PPG is clear that although all parties are expected to behave reasonably throughout the planning process, costs can only be awarded in relation to unnecessary or wasted expense at the appeal, although earlier behaviour can be taken into account.
6. The application was submitted in May 2022 and determined in November, 7 months later, in excess of the Government's 8-week statutory target. The Council's main reason for the delay appears to relate to heavy workloads. Delays in the decision-making progress undermine public confidence in the process and can create additional costs for the development industry, in conflict with the National Planning Policy Framework's objective to support economic growth and productivity.
7. There appear to have been several long delays in the Council's consideration of the scheme, both in replying to the Appellant and in reaching a final decision. However, through email correspondence it is noted that the Council replied to queries and actively discussed the merits of the case with the Appellant in a proactive manner during the application consideration process. Although beyond the statutory timeframe for such decisions, this does not appear to be particularly excessive, especially in mind of the ongoing discussions noted in evidence.
8. With respect to the stated financial costs to the Appellant, created by the delay, the PPG explains that the costs of appealing are normally expected to be borne by the parties. The Appellant's costs assessment assumes that planning permission should have been granted within the prescribed 8-week period. However, my main decision has found that planning permission should not be given and as such any perceived costs savings or rising construction costs are theoretical only. Furthermore, as the PPG explains, compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission, are ineligible in a costs application.

Unreasonable behaviour

9. The Appellant suggests that in advising that the scheme would be refused, without giving fair time to react, amounts to unreasonable behaviour. The Appellant indicates this occurred twice during the consideration process (in October and November). It is also asserted that the second reason for refusal, with respect to Green Belt harm, was only included to strengthen the refusal in the event of an appeal.
10. It appears that the first RfR, with respect to design, was identified early in the process and the Appellant had an opportunity to provide further evidence on this matter. The second reason was identified as a concern near the end of the consideration process. Whilst it is unfortunate that this was only raised at this time, the concern identified by the Council was a fundamental matter with respect to Green Belt policy. In my main decision I have also found that this matter caused a conflict with policy and harm of great weight.
11. It is reasonable and common, for a Council to share its partial assessment of a scheme during its consideration process. However, parties should recognise that the identification of planning issues during the assessment process, may be incomplete. Consequently, this may not reflect all issues that become

determinative at the time of making a decision. Nonetheless, without a clear indication that the Council was offering only a partial summary of the issues, it seems that it was not entirely clear with the Appellant.

12. However, I am unconvinced that the matters of concern, especially with respect to Green Belt, could have been readily resolved through further discussion or if the Council had received the further evidence that was submitted in support of the appeal. Therefore, whilst the Council did not process the application efficiently, I have identified a reasonable degree of positive communication, enabling me to conclude that the Council did not behave unreasonably in this regard.

Timber cladding

13. The Appellant has suggested that the Council made subjective judgements rather than objective analysis. It is asserted that the Council was of a fixed view that prevented it from revisiting its concerns about the suitability of timber boarding when presented with new evidence. However, whether a given design would be suitable in consideration of the Council policies and guidance is a matter of good planning judgement. The officer report acknowledges that the use of timber cladding is evident elsewhere in the streetscene, but not in the immediate vicinity of the site. This indicates to me that the officer paid regard to the assessment of the use of timber cladding within the area submitted to the Council. Therefore, I am satisfied that an appropriate objective judgement was applied in this case.
14. Consequently, I am unconvinced by the Appellant's assertion that once it had been demonstrated that timber boarding had been used locally it should be assumed to be an appropriate material for the proposal. Such a linear approach fails to consider the context of each place where this material was used and, whilst evident, whether it made a significant contribution to the character of the area which was a judgement reasonably made by the Council. This comment is irrespective of the fact that I have, in my main decision, found the proposed material to be suitable within its context.
15. According, I am unconvinced that the Council failed to apply an objective assessment of the proposed material simply because it did not agree with the Appellant's assessment of local character.

Conclusion

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

Ben Plenty

INSPECTOR