



Costs Decision

Site visit made on 6 July 2023

by Lewis Condé Msc, Bsc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 August 2023

Costs application in relation to Appeal Ref: APP/W0340/W/23/3316487 The old barns at Benhams, Hollybush Lane, Burghfield, Reading RG7 3JS

- 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 & Mrs Atkinson for a full award of costs against West Berkshire District Council.
- The appeal was against the refusal of an application for planning permission for 'change of use from tractor barn to a 2 bedroom apartment'.

Decision

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

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 PPG also highlights examples of the types of behaviour that may give rise to the award of costs. This includes, lack of co-operation with other parties, delays in providing information, failure to produce evidence to substantiate each reason for refusal on appeal, as well as vague, generalised or inaccurate assertions about a proposal's impact.
4. The Council's reason for refusal was based on misinterpreting the submitted plans. Furthermore, from the evidence before me, the Council's concerns regarding a lack of outlook from the proposed development were not raised with the applicants until the decision was issued. There would appear to have been ample opportunity for the Council to engage with the applicants regarding its concerns, given the timescale in which the application was determined. Additionally, I understand that the applicants on several occasions offered to address any queries or concerns that the Council may have had.
5. I appreciate that due to the site's planning history (including related applications at the site being considered concurrently by other officers at the time), the application may not have been entirely straightforward. However, it remains that planning officers did not correctly interpret the submitted plans. Furthermore, had the local planning authority (LPA) appropriately engaged with the applicants, it is likely that the matter could have been easily resolved, such that the inadequate reason for refusal would not have been taken forward.
6. I note that the Council, through the appeal has also suggested that the submitted Tractor Store Drawing (ref: 244-10C Jan-04) did not provide

sufficient information to have made an accurate assessment of the appeal. However, the drawing does not seek to demonstrate the proposal but provides context of the wider building that the proposal falls within.

7. Having conceded that the reason for refusing the planning application does not hold up to scrutiny, the Council introduced a new reason for refusal at the appeal stage. The Planning Inspectorate's Procedural Guide (Planning Appeals – England), advises that the appeal stage should not usually be used by local planning authorities to introduce additional policies or raise new issues beyond those in its reasons for refusal.
8. From the evidence before me, the nature of the proposed internal living space should have been known to the Council when determining the original application. Consequently, if the size and quality of the internal living space was of concern to the Council, it should have been detailed within the officer's report and also formed a reason for refusal at the time of the application's determination.
9. Instead, I note that the original planning officer's report undertook an assessment of the living space and found it to be of a suitable standard. I also understand that the officer's report was subject to internal review by senior management. I am therefore somewhat sceptical as to whether the size and quality of the internal living space is of genuine concern to the LPA in this instance, or instead, is being used as a convenient justification to maintain that the appeal should have failed.
10. For reasons set out in my main decision I am also satisfied that the proposal complies with the Nationally Described Space Standards. Again, agreement between the main parties may also have been reached on this point had the Council expressed any concerns with this issue to the applicants during the application process.
11. Overall, the Council has acknowledged that its reason for refusal does not stand-up to scrutiny, due to its misinterpretation of the plans. I recognise that mistakes can happen, and that mistakes are not necessarily unreasonable. However, in this instance, I find that the inaccurate assessment of the proposal together with the lack of dialogue from the Council does amount to unreasonable behaviour that has resulted in an otherwise avoidable appeal. This has been further compounded by the Council also seeking to introduce a new reason for refusal during the course of the appeal, which does not reflect its initial findings.
12. For the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

13. 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 West Berkshire District Council shall pay to Mr & Mrs Atkinson, 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.

14. The applicants are now invited to submit to West Berkshire District 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.

Lewis Condé

INSPECTOR