



Costs Decision

Site visit made on 19 July 2023

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 October 2023

Costs application in relation to Appeal Ref: APP/Q3305/W/22/3313309 Land adjacent to Whitemill, Marston Lane, Frome

- 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 Frome LVA LLP for a full award of costs against Mendip District Council.
 - The appeal was against the refusal of an outline planning application for 5no. self-build dwellings and associated works with details of access and all other matters reserved.
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Decision

1. The application for an award of costs is partially 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 applicant, seeking a full award of costs, relies on the Council having prevented or delayed development that should clearly have been permitted, failing to produce evidence to substantiate each reason for refusal, making vague, generalised, or inaccurate assertions about the proposals impact and refusing permission on the basis of a matter capable of being dealt with by condition. This follows a positive recommendation to approve the planning application by officers to the Council's Planning Board, but which the Board then decided to refuse. It is contended that the reasons for refusal do not withstand scrutiny and that there is no harm arising from the matters alleged in the reasons for refusal.
4. In relation to the reason for refusal pertaining to highway safety, the applicant contends that there was sufficient information presented at the time of the application to demonstrate that there would be no detriment to highway safety. It is further highlighted that there was no objection to the scheme from the Council's highways consultee. I am conscious however of the Council asserting that the decision to refuse the application on this basis was made having regard to the local highways knowledge of the members of the Planning Board. The minutes of the Board meeting clearly show that Members were concerned over the width of the road at the point of the proposed vehicular access and that, notwithstanding the findings of the speed survey, there were concerns over its results and that they may not be representative of the actual speeds of vehicles at this location. As such, it is clear that the Board members considered

the submitted information but were unconvinced by it, a view that they were entitled to come to, despite the positive recommendation from Officers. Thus, I do not find that the Council has been unreasonable in the formulation of the reason for refusal in respect of access, despite me disagreeing when making my decision.

5. The applicant considers in respect of the second and third reason for refusal that they do not result in any harm, either through the loss of any roadside hedge or other landscape impact of the development, particularly on the skyline, as is alleged. Again, when making my decision I have disagreed with the contentions of the Council and found that there would be no harm through the loss of any roadside boundary feature or through any unacceptable visual effect on the ridgeline at this location. However, I am mindful that this can be a subjective matter and that individuals may have differing opinions on this. The Members of the Board considered that the scheme would be detrimental in this regard. In my view, that is a view that the Members on the Board were entitled to reach. They are not bound to accept the recommendation of the officer, provided they can show good reason for departing from it. While I have not agreed with the Council on this point, the evidence submitted adequately establishes the basis on which the scheme was resisted. Thus, I consider that concerns in this regard were not unreasonable.
6. The fourth reason for refusal relates to the effect of the proposal on the nearby property of Whitemill. The Council points to the difference in levels between the appeal site and this property and that the positioning of two-storey dwellings immediately adjacent to it would be harmful. However, the application was submitted in outline with only the matter of access for determination. Matters of scale and layout are for future consideration. Furthermore, the illustrative layout provided shows sufficient separation between the existing and proposed buildings. In my view, it has not been sufficiently demonstrated that the Council was reasonable in taking the position that it did in this regard; there is only scant reference to this matter within the Minutes of the Board meeting and this is not sufficient to establish reasonable grounds for taking a view different to that of the recommendation of the Planning Officer in respect of this matter. The applicant has been put to unnecessary expense in seeking to defend this reason.
7. Reason for refusal five refers to the planning balance undertaken by the Council, identifying the harms alleged and weighing them against the benefits of the scheme. This is a quintessential matter of planning judgement for the decision-maker. The Members of the Board had substantive concerns in regard to the development and they considered these to significantly and demonstrably outweigh the benefits. I find nothing unreasonable in that assessment.
8. Nonetheless, I therefore find that, for the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated in respect of the reason pertaining to the alleged effect on the living conditions of neighbouring occupiers, and that a partial award of costs is justified.

Costs Order

9. 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 the Mendip District Council shall pay to Frome LVA LLP the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the fourth reason for refusal, such costs to be assessed in the Senior Courts Costs Office if not agreed.

10. The applicant is now invited to submit to the Mendip 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.

Martin Allen

INSPECTOR