



Costs Decision

Site visit made on 28 July 2023

by Lewis Condé BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th October 2023

Costs application in relation to Appeal Ref: APP/P1615/W/23/3316465 Woodcroft, Tibberton Lane, Tibberton, Gloucestershire, GL19 3AQ

- 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 and Mrs Ashwell for a partial award of costs against Forest of Dean District Council.
 - The appeal was against the refusal of planning permission for the erection of 1 no Detached Self-Build Dwelling House and associated works.
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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 applicants contend that the Council has exhibited unreasonable behaviour that made the appeal necessary in several ways. Namely, through preventing or delaying development that should clearly be permitted; failing to produce evidence to substantiate each reason for refusal; providing vague, generalised or inaccurate assertions about a proposal's impact, which is unsupported by objective analysis; and refusing to provide reasonably requested information.
4. The applicants acknowledge that the Council's first reason for refusal is a matter of planning judgement but suggests that the remaining reasons for refusal cannot be justified through objective analysis. A partial award of costs is therefore requested in relation to having to address these matters in the appeal process.
5. It will be seen from my main decision that I concur with the Council that the development would not comply with its adopted spatial strategy and that there are no material considerations that justify a departure from the approach of the development plan. As such, given the Council's first reason for refusal, an appeal would in any case have been necessary.
6. In respect of the remaining reasons for refusal, I appreciate that the application was in outline with all matters reserved for future consideration. Thereby enabling consideration of the principle of development without having to incur costs associated with detailed design. Nevertheless, the decision maker still needs to be satisfied that an acceptable form of development could come

forward. Furthermore, the onus is on the applicants to suitably demonstrate that the proposal is acceptable.

7. Due to a lack of detailed evidence to demonstrate otherwise, I also found that the Council was justified in refusing planning permission in relation to the proposal's impacts on biodiversity and drainage/flood risk. On this latter issue, I recognise that the Council's flood risk officer and Severn Trent Water did not object to the proposals subject to the imposition of planning condition(s). However, the case officer is entitled to go against the advice of consultees so long as a case could be made for the contrary view. As will be seen in my decision, I am satisfied that the case officer has exercised a planning judgement and suitably substantiated the reasons for refusal in respect of these matters.
8. In respect of the potential impacts of the proposal on highway safety (reason for refusal no. 2) and the impacts on the character and appearance of the area (reason for refusal no. 3), I reached an alternative view to the Council. Nevertheless, these again remained issues that were a matter of planning judgement. Furthermore, the reasons for refusal as set out in the decision notice are complete, precise, specific, and relevant to the application, whilst the case officer's report and the Council's appeal statement clearly demonstrate the reasons why such views were reached (despite a lack of objection from a relevant consultee).
9. In coming to the above view, I note that the applicants have suggested that reason for refusal no. 3 is not legitimate as there would not be a need to remove/reduce significant lengths of hedgerow to provide the requested visibility splays. However, this does not appear to be supported by my observations on site or the applicants' submission documents¹.
10. It is also claimed that the Council has behaved unreasonably through refusing to provide reasonably requested information. The applicants highlight that a Freedom of Information (FOI) request was made to the Council requesting a full disclosure of the planning application file, due to the perception that the Council had been actively courting objections to the proposal.
11. The Council's FOI team did not comply with the FOI request, informing that it was exempt from complying under Exception Regulation 12(4)(b) of the Freedom of Information Act (2000), as amended. This was essentially on the grounds that the time/resources that would be required to facilitate the request would be unreasonable (e.g. time required to search and redact relevant personal information on the file). The Council instead identified that all relevant material on the application was already in the public domain having been published on its Public Access Portal. I am also informed that all the correspondence remain available for public view via this platform.
12. Despite the applicants' concerns, I have no legitimate reason to doubt the Council's response to the FOI request. I therefore cannot conclude that it has acted unreasonably in withholding information that would have resulted in either the appeal being avoided or the issues to be considered being narrowed.
13. Concerns have also been raised in respect of the case officer's personal conduct during the course of the original planning application. Ultimately, concerns

¹ E.g. Indicative Layout with Splays (Draft) – Drawing No. AL.SK.110 Rev P3 – Dated Sept 2022.

regarding an officer's professionalism is a matter for the Council to decide whether or not it needs to investigate and/or address. However, with regards to this costs application, it has not been demonstrated that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has occurred.

14. On the basis of the above, an award of costs is not warranted.

Lewis Condé

INSPECTOR