



Costs Decision

Site visit made on 7 November 2023

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2023

Costs application in relation to Appeal Ref: APP/Y3940/W/23/3322880 Land adj 29 Spin Hill, Market Lavington, Devizes SN10 4NS

- 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 James Tilley for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for the change of use from agriculture to domestic use, retention of two shipping containers and construction of access.
-

Decision

1. The application for a full 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 appeal followed the refusal of permission on 28 April 2023 of an application made on 2 March 2023 for the change of use from agriculture to domestic use, retention of two shipping containers and construction of access. There was one reason for refusal, which was concerned with the impact of the development on the character and appearance of the area. My decision, which accompanies this costs decision, agreed with the Council's decision and dismissed the appeal.
4. The appellant's costs application is based upon the claims that the Council has not been consistent in their decision making, made inaccurate and incorrect assertions regarding the proposal and refused the application on a ground that was capable of being dealt with by condition. Additionally, it is contended that the Council have not taken account of a fallback position.
5. The Council's rebuttal sets out that they have determined the application on its own individual merits and the development on the adjacent site does not make the appeal development acceptable. They go on to state that the reference to the site being double the width of the existing garden was that the combined area of the existing garden and the appeal site would be double the width of the existing garden. They accept that the dwelling at the nearby site is a new build and not a conversion. In terms of the issue around the potential use of a condition to address the Council's concern, the Council have confirmed that domestic paraphernalia is only one part of the harm that the Council considers the development causes. Lastly, the Council contends that the fallback position referenced by the appellant is materially different to what is being applied for.

6. I do not consider that the Council have acted inconsistently. I note that a site further down the road from the appeal site has been the subject of notable change to the character and appearance of that site. However, as stated by the Council and acknowledged by the appellant, each application should be considered on its own individual merits. Furthermore, the development on the nearby site has arisen from different circumstances, and the contexts behind the development at that site and the development that has taken place at the appeal site are not directly comparable. I also concur with the Council that the development at the nearby site does not justify the development at the appeal site. The Council have not acted unreasonably when arriving at a different outcome when refusing the application relating to the appeal site.
7. Regarding the width of the site and the existing garden at No 29 Spin Hill, I acknowledge that there may have been somewhat poor wording on the part of the Council, but this has not had a bearing on my determination of the appeal. The Council have also accepted that the dwelling at the nearby site is a new build and not a conversion. The comments made in the Officer report regarding these particular matters did not alter the understanding of, and decision making on, the proposal. As such, the Council have not acted unreasonably in these respects.
8. The introduction of domestic paraphernalia on to the site was not the only area of concern for the Council. As such, a condition restricting further development on the site would not fully address the reason for refusal. Furthermore, as set out in my decision, a condition cannot control domestic paraphernalia that does not constitute development under Section 55 of the Town and Country Planning Act 1990. The Council have therefore not acted unreasonably by not approving the application with the condition suggested by the appellant.
9. The appellant contends that there is a fallback position that should the appeal be dismissed then the land would have to revert back to its agricultural use, and this would involve the fencing remaining to subdivide the site from the adjoining field. Additionally, it is suggested that buildings may be required to store agricultural feed and provide shelter, and that the site would have a similar appearance to the current mown grass due to grazing by livestock. The Council did not raise the fencing as an issue in the reason for refusal. The potential use of the site in the future and erection of buildings are supposition. As such, I do not consider that the Council have acted unreasonably by not having regard to the appellant's asserted fallback position.
10. Having regard to all of the above, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

K Reeves

INSPECTOR